

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 898 of 2020

Appellant :- Board Of Basic Education And Another

Respondent :- Arvind Prakash Dwivedi And 2 Others

Counsel for Appellant :- Arun Kumar

Counsel for Respondent :- C.S.C., Shantanu Khare

Hon'ble Govind Mathur, Chief Justice

Hon'ble Siddhartha Varma, J.

This appeal is preferred to question correctness of the judgment dated 25th August, 2020 passed by learned single Bench in Writ-A No.5210 of 2020.

Succinctly, facts of the case are that the respondent-petitioner entered in service of the appellant-respondent being appointed as Assistant Teacher by an order dated 4th January, 2006. While in service he was also promoted to the post of Head Master of a Junior High School. The petitioner was placed under suspension by an order dated 7th December, 2019 and was subjected to disciplinary action under a chargesheet dated 13th January, 2020. In the chargesheet aforesaid, it was alleged that in the year 1984 the delinquent employee appeared in an examination of Purva Madhyama held by the Sampurnanand Sanskrit Vishwavidyalaya, Varanasi and in the same year he also obtained high school certificate from U.P. Board of High School and Intermediate Education. After holding an inquiry, by an order dated 11th June, 2020 the Basic Education Officer imposed a penalty of dismissal upon the respondent-petitioner. Aggrieved by the same, a petition for writ was filed that came to be accepted under the judgment impugned.

Learned single Bench while accepting the petition for writ relied upon the law laid down by Supreme Court in ***Kuldeep Kumar Pathak Vs. State of U.P. and others reported in (2016) 3 SCC 521***. In the case aforesaid, the Supreme Court held as under:-

"7. We are of the opinion that both the submissions of the learned Senior Counsel are valid in law and have to prevail. The High Court has been influenced by the argument of the respondents that simultaneous appearance in two examinations by the appellant in the same year was "contrary to the Regulations". However, no such Regulation has been mentioned either by the learned Single Judge or the Division Bench. Curiously, no such Regulation has been pointed out even by the respondents. On our specific query to the learned counsel for the respondents to this effect, he expressed his inability to show any such Regulation or any other rule or provision contained in the U.P.

Intermediate Education Act, 1921 or Supplementary Regulations of 1976 framed under the aforesaid Act or in any other governing Regulations. Therefore, the entire foundation of the impugned judgment of the High Court is erroneous.

8. It is also pertinent to note that the appellant's intermediate examination and result thereof was not in question before the U.P. Board. No illegality in the admission in that class has been pointed out by the respondents. The alleged charge of simultaneously appearing in two examinations, one of the U.P. Board and other of the Sanskrit Board, was with respect to Class X and equivalent examination which did not relate to admission in intermediate course. The only provision for cancelling the said admission is contained in Regulation 1 of Chapter VI-B. It details the procedure for passing the order of punishment cancelling intermediate results and, inter alia, prescribes that a committee consisting of three different members is to be constituted and entrusted with the responsibility of looking into and disposing of cases relating to unfair means and award appropriate penalty as specified in the Regulations itself. However, there is no allegation of any unfair means adopted by the appellant in the instant case and, therefore, that Regulation has no applicability. Even otherwise, no such committee was constituted. Therefore, having taken admission in intermediate on the basis of past certificate issued by a separate Board, which was recognised, and not on the basis of the result of Class X of the U.P. Board, the appellant derived no advantage from his examination of the U.P. Board while seeking admission in intermediate course. Thus, from any angle the matter is to be looked into, the impugned orders dated 20-4-2011 and 10-5-2011 passed by the respondents are null and void, apart from the fact that they are in violation of the principles of natural justice."

Learned single Bench also held that before imposing the severe punishment, no opportunity of hearing was given to the respondent-petitioner and that is in flagrant violation of principles of natural justice.

In appeal, the argument advanced by learned counsel appearing on behalf of appellant-respondent is that the respondent-petitioner could have not availed benefit of two educational certificates while he obtained higher education on basis of one specific certificate of high school issued by U.P. Board of High School and Intermediate Education.

We do not find any merit in the argument advanced.

It is not in dispute that at the relevant time the respondent-petitioner could have obtained two qualification simultaneously and the respondent-petitioner as such possessed requisite qualification to hold the post of Assistant Teacher as well as the further promotional post.

Learned single Bench in view of it, has not committed any error that may warrant interference in appellate jurisdiction.

While dismissing the appeal, we would like to observe that the

government authorities must be quite sensitive while imposing the severe punishment of dismissal as a consequence to disciplinary action. It is strange that in the instant matter the authority competent despite knowing the fact that the respondent-petitioner is having requisite qualification to hold the post chose to impose the penalty of dismissal.

With the observations as above, the appeal stands dismissed accordingly.

Order Date :- 21.10.2020

Bhaskar

(Siddhartha Varma, J.)

(Govind Mathur, C.J.)