

INDRA BHAUN GAUR  
v.  
COMMITTEE, MANAGEMENT OF M.M. DEGREE COLLEGE AND  
ORS.

NOVEMBER 6, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Service Law :*

*Charges of irregularity in the conduct of examination against principal—Principal helping his son in the exam—Departmental proceedings—Grant of ample opportunity to the Principal for placing his case—Non-cooperation by the Principal—Termination order—Challenge—Dismissal by High Court—Appeal—Plea that non-payment of subsistence allowance and denial of opportunity vitiates proceedings, and also bias on part of Managing Committee and the fact of Principal's son being exonerated of the charges—Held: Despite repeated opportunities given Principal totally indifferent in extending cooperation—Unless prejudice shown, mere non-payment of subsistence allowance cannot ipso facto be ground to vitiate proceedings—8 out of 11 members according approval to the proposed action of termination shows no bias—His son exonerated of charges as University not following principle of natural justice—Also there is allegation regarding admission of principal's son illegally—Hence matter remitted back to High Court for fresh adjudication.*

**Appellant was appointed as Principal of the Respondent College. University examinations were held. Appellant committed irregularities in conducting examination; he changed the answerbook of his son. Respondent-Managing Committee resolved to suspend the appellant and also hold an enquiry. Appellant was issued charge-sheet. All the documents which were demanded by the appellant were given. He did not appear before the enquiry Committee and the Committee found him guilty of irregularity in the conduct of examination and recommended his dismissal subject to approval of the Vice-Chancellor. Thereafter, the Managing Committee resolved that the appellant's service be terminated instead of dismissal. Vice-Chancellor granted approval. Appellant challenged the order. It was rejected, as he had been given adequate opportunity to place**

**A** his case before the Enquiry Committee but he failed to do so. Appellant challenged the order of Vice-Chancellor by filing a writ petition before High Court and it was dismissed. Application for review was also dismissed. Hence the present appeal.

**B** Appellant contended that during the period of suspension he was not paid subsistence allowance; that the appellant's son had filed writ petition which was allowed and Vice-Chancellor had accepted the order of High Court, quashing the action taken against him and had directed declaration of his result; that there is complete absence of any substratum of the charge of alleged irregularities for taking any action against the appellant;

**C** that several documents placed on record before the High Court established that there was bias on part of the Managing Committee; and that even two of the persons who were part of the Committee which took decision stated about the bias.

**D** Respondent-Managing Committee contended that in order to get subsistence allowance the particular procedure was to be followed, which was not done by the appellant and subsistence allowance thereafter has been subsequently paid; that the action against appellant's son was set aside because of non-compliance with the requirements of principles of natural justice and not on account of any specific finding objectively

**E** recorded; that the High Court had directed the authorities to proceed afresh after grant of opportunity, the University thought otherwise, and the Vice-Chancellor directed declaration of the result which *per se* does not take away the right to proceed against the appellant; that the order goes to show that 8 of the 11 members agreed for action against the

**F** appellant in the manner done, there was no question of any bias; and that the appellant having failed to avail the adequate opportunity granted cannot make a grievance.

Disposing of the appeals, the Court

**G** HELD : 1.1. In the instant case, there was total lack of cooperation from the appellant. It is only a person who is ready and willing to avail of opportunity given can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference in extending cooperation. Therefore, on that score the appellant cannot have

**H**

any grievance. [333-E-F]

1.2. Regarding the effect of not paying the subsistence allowance no stand was taken before the authorities that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot *ipso facto* be a ground of vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings. [333-F-H; 334-A-B]

1.3. The Chancellor found that 8 of the 11 members had accorded approval to the proposed action against the appellant. The discordant note by the others apparently was obliging the appellant. That itself takes away the sting of appellant's case relating to alleged bias. [334-B-C]

1.4. Writ petition filed by appellant's son was allowed on the ground that order of University was passed in violation of principles of natural justice. The University had directed declaration of his result. High Court did not consider this aspect though in the review application specific stand has been taken. That may not be the finally determinative factor, but needs consideration. High Court shall consider all relevant materials and arrive at its conclusion in accordance with law. [334-D-E]

1.5. High Court took note of certain other factors, not part of charges against the appellant i.e. the alleged irregularities in admitting the appellant's son in BA class when he had not passed the intermediate class. Though the High Court has referred to the same, no opportunity was granted in this matter. Therefore, it would be proper if the High Court hears the matter afresh to consider the effect only of declaration of result of appellant's son, and also the allegations regarding admission of his son improperly and illegally. Thus, the matter is remitted back to High Court for fresh adjudication. [334-E-G]

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8663-8664 of 2003.

From the Judgment and Order dated 16.5.96 and 24.8.2000 of the Allahabad High Court in C.M.W.P. No. 8804 of 1979.

**B** R.K. Jain, S.S Nehra and Vidya Dhar Gaur for the Appellant.

Ashok K. Srivastava (NP), Shail Kumar Dwivedi and S.D. Sharma for the Respondents.

**C** The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

**D** High Court of Allahabad having dismissed the writ application filed by the appellant questioning order of termination of his services by the Committee of Management of Mahamana Malviya Degree College, Meerut (hereinafter referred to as the 'Managing Committee') and the application for review, these two appeals have been filed. Factual background sans unnecessary details is as follows:

**E** Appellant was appointed as the Principal of the college in question in July 1974. In the year 1977, University Examinations for graduate classes were held in the college. University received report regarding certain irregularities in the examination centre. Vice-Chancellor appointed a Committee to enquire into alleged irregularities. The inquiry Committee enquired into the matter and found that the conduct of the examination at the centre where the appellant was acting as Senior Superintendent of the Examination Centre was not in order. The inquiry Committee found several gross irregularities committed by the appellant in the conduct of the examination. It was noted that the appellant's son Rahul was also appearing in the examination. In the evening shift of the examination on 29.4.1977, his son appeared at the examination in Basic Statistics General Course. After considering the statements given by several persons, the Committee held that the appellant helped his son and had replaced the answer book of his son, signatures of the Invigilator on the alleged answer book were not of the Invigilator Shri S.K. Sharma. The inquiry Committee recommended action. In its meeting held on 19.9.1977, the Managing Committee considered the report of the inquiry Committee and by resolution of even date resolved to

**F**

**G**

**H**

suspend the appellant and further resolved to hold an inquiry in the matter. A

Pursuant to the aforesaid resolution, the appellant was issued a charge sheet on 27.9.1977. It was specifically mentioned that the meeting of the inquiry Committee was to be held on 16.10.1977 and the appellant should be present. Though appellant received the charge sheet, he did not submit his reply and on the contrary, asked for 15 days time by his letter dated 13.10.1977. B  
Considering his request, the meeting of the inquiry Committee was adjourned to 25.10.1977. Though appellant was informed by registered post, he did not appear before the inquiry Committee. The inquiry Committee considered the materials on record and found the appellant guilty for irregularities and C  
illegalities in the conduct of examination. It was found that he had changed the answer book of his son with ulterior motive. The inquiry Committee recommended dismissal of the appellant from service subject to approval of the Vice-Chancellor. Notice was given by the Vice-Chancellor to the appellant and the Managing Committee to consider the matter on 21.12.1977. It was subsequently adjourned to 23.12.1977 when the Vice-Chancellor heard the D  
appellant and the Managing Committee. After that the Vice-Chancellor by his letter dated 24.12.1977 directed the Managing Committee that another opportunity be given to the appellant to appear before the inquiry Committee and all relevant papers were to be given to the appellant. The matter was fixed by the inquiry Committee on 20.1.1978 and the appellant was informed by registered post. But he did not appear before the inquiry Committee. The E  
matter was again considered by the inquiry Committee, which confirmed its report dated 25.10.1977 and Managing Committee by its letter dated 23.1.1978 informed the University that the appellant did not appear before the inquiry Committee. Vice-Chancellor was requested to accord approval to the proposal for dismissal of the appellant. All the documents which were demanded by F  
the appellant had been given on 14.2.1978. The Committee of Management again received a letter from the University, stating that since all the documents demanded by the appellant were handed over to him on 24.2.1978, the appellant had been directed to appear on 24.2.1978. The Managing Committee was requested to submit its case after 24.2.1978 for consideration of Vice-Chancellor. In spite of the said letter of the University, the appellant again G  
did not appear before the inquiry Committee. Necessary information in this regard was given to the Vice-Chancellor. The University again asked the Managing Committee and the respondent to appear before the Vice-Chancellor on 24.4.1978 and again on 5.6.1978. The matter was heard by the Vice-Chancellor who was of the view that punishment proposed by the Managing H

A Committee was harsh and Managing Committee was required to re-consider the same. The Managing Committee again considered the matter and resolved that appellant's service should be terminated instead of dismissal. Thereafter Vice-Chancellor by order dated 1.7.1978 granted approval to the proposal of the Managing Committee. Appellant challenged the said order by preferring a Reference under Section 66 of the U.P. State Universities Act, 1973 (in short the 'University Act') before the Chancellor. The reference was rejected by order dated 3.8.1979. The Chancellor found that the appellant had been given adequate opportunities to place his case before the Inquiry Committee, but he failed to do so. The appellant challenged order of the Vice-Chancellor and Chancellor before the High Court. According to him opportunity was not granted before the orders were passed. This stand was rebutted by the Managing Committee with reference to the record which indicated that more than adequate opportunity was granted. High Court by the impugned judgment dated 16.5.1996 dismissed the writ petition.

D The appellant questioned correctness of the judgment by filing special leave petition before this Court in SLP (C) No. 23634 of 1996. By order dated 12.12.1997 the same was disposed of with certain observations. The appellant's primary stand before this Court was that the judgment was rendered after passage of two years and many of the contentions canvassed, were not considered in the judgment. This Court relegated the appellant to review application. The Review petition was rejected by order dated 24.2.2002 which is also subject matter of challenge.

F Mr. R.K. Jain, Learned Senior Counsel, for the appellant submitted that the High Court's order suffers from vulnerability on more counts than one. It is submitted that the appellant was placed under suspension on 19.9.77 and was removed on 19.6.1978. During the period of suspension no subsistence allowance was paid. That vitiated the proceedings. Secondly, the basic ground on which the proceedings were initiated related to alleged adoption of corrupt practices by the appellant for the benefit of his son, both joining together. Questioning the action taken by the authorities against him, the appellant's son had filed writ petition which was allowed and the Vice-Chancellor had accepted the order of High Court, quashing the action taken against him and had directed declaration of his result. According to Mr. Jain, there is complete absence of any substratum of the charge of alleged irregularities for taking any action against the appellant. Finally it was submitted that several documents placed on record before the High Court established that there was

bias on part of the Managing Committee. Even two of the persons who were part of the Committee which took decision stated about the bias. A

In response, learned counsel for the Managing Committee submitted that in order to get subsistence allowance the particular procedure was to be followed, which was not done by the appellant and subsistence allowance thereafter has been subsequently paid. So far as the son's case is concerned, the action against him was set aside because of non-compliance with the requirements of principles of natural justice and not on account of any specific finding objectively recorded that no irregularities as such took place or that the petitioner was innocent as well. In fact, the High Court had directed the authorities to proceed afresh after grant of opportunity. The University thought otherwise, and the Vice-Chancellor directed declaration of the result. That per se does not take away the right to proceed against the appellant. Finally the order goes to show that 8 of the 11 members agreed for action against the appellant in the manner done. There was no question of any bias, and there was a collective decision. The appellant was granted adequate opportunity as the factual scenario would go to show and he having failed to avail them, cannot make a grievance. B  
C  
D

From the judgment of the High Court, in the writ petition it appears that there is no reference to the alleged infirmity on account of subsistence allowance having not been paid. There was also no specific finding recorded for the question of bias as alleged presently. We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the appellant to place his case. He did not choose to do so. It is only a person who was ready and willing to avail of opportunity given can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference in extending cooperation. Therefore, on that score the appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot E  
F  
G

H

A *ipso facto* be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

B

So far as case of bias is concerned, we find that Chancellor has elaborately dealt with this aspect and has found that 8 of the 11 members had accorded approval to the proposed action. The discordant note by the others who did not, apparently was obliging the appellant. That itself takes away the sting of appellant's case relating to alleged bias.

C

The residuary question is whether the appellant's son having been exonerated, the substratum of the accusations vanished as claimed on behalf of the appellant. The High Court's judgment is dated 11.1.1979, whereby appellant's son writ petition was allowed on the ground that order of University was passed in violation of principles of natural justice. The University by letter dated 14.6.1983 had directed declaration of the appellant's son's result. This aspect does not appear to have been considered by the High Court though in the review application specific stand has been taken. That may not be the finally determinative factor, but needs consideration. The High Court shall consider all relevant materials and arrive at its conclusion in accordance with law.

D

E

Further the High Court had taken note of certain other factors which were not part of charges against the appellant i.e. the alleged irregularities in admitting the appellant's son in BA class when he had not passed the intermediate class. Though the High Court has referred to the same, no opportunity was granted in this matter. We feel it would be proper if the High Court hears the matter afresh to consider the effect only of declaration of result of appellant's son, and also the allegations regarding admission of his son improperly and illegally. Now, the appellant knows that this is one of the allegations against him which would justify his termination *de hors* the proceedings already initiated. The appellant shall be permitted to place material in that regard. Similar shall be the position so far as the respondents are concerned.

F

G

Since we are remitting the matter for fresh adjudication it shall be open

H



to place such material as would be necessary for the purpose of adjudication of afore-noted two aspects. We have not expressed any opinion on the merits. We request the High Court to make an effort to dispose of the matter by the end of June, 2004 after due notice to the parties. Civil Misc. writ petition No. 8804/1979 shall be restored to its original number and file. **A**

The appeals are accordingly disposed of. No costs. **B**

N.J.

Appeals disposed of.