
(2018) 03 JH CK 0112
In the Jharkhand High Court
Case No : W.P.(S) No. 5044 of 2015

ARJUN PRASAD RAI

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 28-03-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Bihar State Universities Act, 1976 — Section 57
Jharkhand Universities Act, 2000 — Section 35

Citation : (2018) 03 JH CK 0112

Hon'ble Judges : SHREE CHANDRASHEKHAR, J

Bench : Single Bench

Advocate : Kumar Sundaram, Amit Kumar, Ashok Kumar Singh, Rashmi Kumar, Zaid Ahmad, Sanjoy Piprawall, Prince Kumar

Final Decision : Allowed

Judgement

1. The petitioner is aggrieved of the order contained in letter dated 04.01.2014.Â

2. Briefly stated, the petitioner was appointed as Lecturer in Langta Baba College, Mirzaganj, Giridih and he tendered his joining on 24.11.1987.Â

Pursuant to an advertisement issued on 22.07.2007 for the post of Principal, interview was held on 05.08.2007 and the petitioner was appointed Principal of the said college on 07.08.2007. Vide its Resolution dated 27.09.2007 the Governing Body of the college approved appointment of the petitioner as Principal in Langta Baba College.Â It appears that on various allegations pertaining to conduct of teachers in the college an enquiry committee was constituted by the University on 10.09.2009 which visited the college on 10.02.2010 and conducted enquiry.Â The enquiry report dated 24.02.2011 was submitted to the University.Â In the meantime, a show-cause notice was issued to the petitioner on 04.10.2010 with reference

to the meeting of Governing Body conducted on 21.09.2010. In compliance of order dated 21.04.2011 of the Syndicate of the University, the petitioner vide letter dated 04.01.2014 was directed to hand-over charge and, in effect, was terminated from service. Aggrieved, the petitioner has approached this Court.

3. Counter-affidavit on behalf of the respondent Vinoba Bhawe University raises a preliminary issue on maintainability of the writ petition; Dr. Ashok Kumar Singh, the learned counsel for the respondent-University submits that appointment of the petitioner on the post of Lecturer was in contravention of section 57 of the Bihar State Universities Act, 1976 and section 35 of Jharkhand Universities Act, 2000.

4. In the counter-affidavit, the respondent-college has pleaded that show-cause notice was issued to the petitioner and after conducting an enquiry in the matter, in compliance of direction issued by the University, the petitioner has been terminated from service.

5. In *Syed Yakoob vs Radhakrishnan & Ors* reported in AIR 1964 SC 477, the Supreme Court has dealt with the powers of the Writ Court under Article 226 of the Constitution of India; when a writ of certiorari shall lie. It has been held that if the punishment order has been passed in contravention of the rules or in breach of the rules of natural justice, a writ of certiorari shall lie. It has further been held that if the decision of the departmental authority is contrary to the materials on record and thus, perverse, the writ Court would interfere in the matter.

6. On supply of enquiry report to the delinquent, the issue has now been conclusively settled by a decision of the Supreme Court in *Managing Director, ECIL, Hyderabad & Ors vs B. Karunakar & Ors* reported in (1993) 4 SCC 727. It has been held that non-supply of enquiry report to the delinquent would render the penalty order unsustainable, for the delinquent is deprived of an opportunity to plead and place materials before the disciplinary authority on the findings recorded by the inquiring officer, to persuade the disciplinary authority to exonerate him from the charges framed against him. In its counter-affidavit, the respondent-college does not claim that a copy of the enquiry report was served upon the petitioner. A

show-cause notice was issued to the petitioner on 04.10.2010, however, it is a

matter of record that the enquiry report vide Annexure-'K' to the counter-affidavit of respondent no.5 was signed on 24.02.2011.Â Evidently, along with the show-cause notice dated 04.10.2010 a copy of the enquiry report dated 24.02.2011 could not have been served upon the petitioner. A second show-cause notice was also not served upon the petitioner, is an admitted fact.Â In the enquiry report, not only there are allegations on validity of appointment of the petitioner, there is an allegation of mis-utilization of the grant received from the State Government.Â The petitioner on account of non-supply of the enquiry report has suffered serious prejudice, writ large on the face of the record.Â

7. In the above facts, finding serious infirmity in the impugned order dated 04.01.2014, it is quashed.Â The writ petition is allowed, however, with liberty to the respondents to proceed with the enquiry from the stage of second show-cause notice by furnishing a copy of the enquiry report to the petitioner.