

(2009) 08 JH CK 0083

In the Jharkhand High Court

Case No : Writ Petition (S) No. 2667 of 2001

Ashok Kumar Mishra

APPELLANT

Vs

Birla Institute of Technology and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Citation : (2009) 08 JH CK 0083

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : R.R. Mishra, for the Appellant; R.S. Mazumdar, for the Respondent

Judgement

Amareshwar Sahay, J.—Heard the parties and with their consent, this writ petition is being disposed of at the stage of admission itself.

2. The petitioner, who was working as an Assistant Professor in Birla Institute of Technology, Mesra, Ranchi, a Deemed University under the University Grants Commission Act, 1956, was departmentally proceeded by the Enquiry Committee duly constituted for the charge that while teaching 4th Semester Mechanical Engineering Students on 29.02.1996, he lost temper and beat mercilessly A.S. Vedant, Roll No. 102/94, student of the Class and twisted his arm, held his neck and hit him with severe blow and also tore his shirt. The Enquiry Committee, on completion of the departmental proceedings, submitted its report, holding that the charge against the petitioner was proved and he was guilty of the same vide Annexure-24. After second show-cause notice, the petitioner submitted show-cause which was found to be not satisfactory and, thereafter, by an order as contained in Annexure-28, the Vice Chancellor by his letter dated July 3, 2000 informed the petitioner that he has been awarded the following punishment:

removal from service which shall not be a disqualification for future employment under the Institute.

3. The petitioner, thereafter, filed appeal before the Chairman, Board of Governor, BIT Mesra, Ranchi but the same was also dismissed which was communicated to

the petitioner by letter contained in Annexure-30 dated 20th March, 2001. The petitioner, thereafter, filed this writ petition challenging the order of punishment for removal from service as contained in Annexure-28 as well as the appellate order passed by the Board of Governor contained in Annexure-30 to the writ petition and prayed for quashing of the same and to reinstate him in service of Birla Institute of Technology, Mesra, Ranchi, He also prayed for direction to the respondents to pay the entire salary and the other benefits for the intervening period.

4. Mr. R.R. Mishra, learned Counsel appearing for the petitioner, at the very outset, submitted that the petitioner is now not challenging the findings of the Enquiry Committee holding the petitioner guilty for the charge but he is only praying for sympathetic consideration about the quantum of punishment which, according to the learned Counsel is disproportionate to the charge levelled against him. Mr. R.R. Mishra further submitted that the petitioner has remained out of service since 1996 i.e. for more than nine years. During this period he is maintaining his family by earning his livelihood only from private tuitions. He further submitted that the petitioner was a student of Birla Institute of Technology, Mesra, Ranchi itself. He obtained M.E. Degree from that Institute and since the petitioner was loving the job of teaching and, therefore, he joined service of Birla Institute of Technology, Mesra, Ranchi as an Associate Lecturer and subsequently, he was promoted to the post of Assistant Professor in the year 1992 and, therefore, his case should be considered sympathetically.

Mr. R.R. Mishra, learned Counsel appearing for the petitioner also submitted that the petitioner is ready to join the service with any condition which may be put by the Institute and the petitioner undertakes not to put forward any monetary claim for the period he was out of service and he would not claim any seniority.

5. On the other hand, Mr. R.S. Mazumdar, learned Counsel appearing for the petitioner submitted that it is a settled law that normally the Courts do not substitute the punishment unless they are found to be shockingly disproportionate and if the punishment is interfered or substituted diligently in exercise of their extraordinary jurisdiction then it will amount to abuse of the process of Court. In support of his submission, Mr. R.S. Mazumdar, learned Counsel relied on a decision of the Supreme Court in the case of U.P. State Road Transport Corporation, Dehradun Vs. Suresh Pal, .

6. Since the findings on fact arrived at by the Enquiry Committee are not being challenged by the petitioner and as such, it is not necessary to go into that aspects of the matter but, at the same lime, from perusal of the order of the disciplinary authority i.e. the Vice Chancellor, inflicting the punishment as contained in Annexure-28, it appears that the petitioner has been awarded the punishment for removal from the service but without any disqualification for future employment under the Institute. In other words, it can be said that in appropriate case, the Institute can very well consider for reinstatement or reemployment of an employee who has been removed from service under Clause

12.(11)(b)(vi) if it deem fit and proper.

7. Considering the facts and circumstances in its totality and in view of the fact that the petitioner was a qualified teacher, was holding the post of Associate Professor and he served the Institute from 1989 till his removal and when the petitioner has undertaken not to put forward any monetary claim for the period he was out of service and also the seniority, then in my view, the Institute should reconsider and rethink about the quantum of punishment and may consider the case of the petitioner sympathetically. Accordingly; the matter is remitted back to the Board of Directors of the respondent Birla Institute of Technology, Mesra, Ranchi with a request to consider the case of the petitioner in the light of his offer and undertaking recorded in this order, as well as the observations made by this Court hereinabove. The Board of Directors may on consideration take a decision in the matter as early as possible preferably within a period of two months from the date of receipt/production of a copy of this order. If necessary or required, the Board may give personal hearing to the petitioner.

8. With the aforesaid observations and directions, this writ petition stands disposed of.