
(2006) 07 PAT CK 0003

In the Patna High Court

Case No : LPA No. 629 of 1998 & Letters Patent Appeal No. 629 of 1998

Baba Saheb Bhimrao Ambedkar Bihar University and Others	APPELLANT
Vs	
Sudhir Kumar Sinha and Another	RESPONDENT

Date of Decision : 12-07-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 3 PLJR 465

Hon'ble Judges : S.K. Katriar, J; R.N. Prasad, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.N. Prasad & S.K. Katriar, JJ.—The case is under the heading "For orders". However, with the consent of the parties, the appeal has been heard on merits, and is being disposed of by this order. The appellants are aggrieved by the judgment and order dated 25th of March, 1998, passed in C.W.J.C. No. 13121 of 1996, whereby the learned Single Judge quashed the order of punishment and directed to reinstate the respondent-writ petitioner in service and pay back wages.

2. The relevant facts of the case are that the respondent, Sudhir Kumar Sinha, is an employee of the appellant University. He is a Proof Reader in the University Press. He was suspended for his misconduct, vide order dated 12.10.1993. A three-man committee was constituted to inquire into the charges levelled against the respondent-employee. He filed C.W.J.C. No. 9795/95, challenging the order of suspension, which was disposed of by order dated 12.7.1996. While disposing of the writ petition, it was ordered that the inquiry be concluded, and the final order be passed by 30.9.1996, and the delinquent must cooperate with the inquiring authority. If the delinquent failed to cooperate, the appellants shall proceed ex parte. If the inquiry is not concluded within the time specified, the inquiry itself shall vitiate. The Inquiry Officer was appointed and notice was given to the respondent-employee who appeared before the Inquiry Officer. However,

he did not file any show-cause. Once he filed an application that there was bereavement in his family and, as such, requested for time which was allowed, but he did not file any show-cause. The Inquiry Officer submitted his report. The Disciplinary Authority passed the order of punishment, i.e. removing him from service by his order dated 28.9.1996 (Annexure-2). On 1.10.1996, the respondent-employee filed a representation asking for copies of the reports and the proceedings as required under Article 16(7) of the Statute, and also alleged denial of opportunity as required under Articles 16(2) of the Statute. On the receipt of the representation, the Registrar of the University kept the order of suspension in abeyance and served a copy of the report to enable him to file show-cause. He did not show-cause, rather he started putting pressure through the Union, as he himself was the President of the Union, to withdraw the order of punishment and, as such, the Registrar by his order dated 6th of November, 1996, recalled the order whereby the order of punishment dated 28.9.1996 was kept in abeyance. The respondent-employee then filed the writ petition bearing C.W.J.C. No. 13121 of 1996, praying therein to quash the said order dated 6.11.1996, and for the direction to the respondents not to remove him from service with effect from 28.9.1996, because of the failure to conclude the enquiry and pass the final order within the time granted by this Court. The said writ petition was allowed and the order dated 28.9.1996 was quashed, directing the appellants to reinstate the employee in service and pay the back wages with effect from 2.10.1996. The order of the learned Single Judge has been challenged in this Letters Patent Appeal.

3. The submission of the learned counsel for the appellants is that in the writ petition only the order dated 6.11.1996 was challenged, and the order dated 28.9.1996 was not challenged. The order dated 6.11.1996 was an order on the representation filed by the respondent-employee. Moreover, the inquiry was concluded and the final order was passed within the time allowed by the Court vide Annexure-1. On the other hand, learned counsel for the respondent submitted that he is not raising a question of technicality that no order was passed within time, rather he is raising a question of denial of opportunity and no charge was furnished to the delinquent.

4. On consideration, this much is obvious that the respondent was suspended for his misconduct. He filed the writ petition bearing C.W.J.C. No. 9795/95, challenging the order of suspension. The said writ petition was disposed of directing the University to conclude the inquiry by 30.9.1996, failing which the inquiry itself shall vitiate.

5. Learned counsel for the appellants pointed out that, in fact, the Court granted more time than the prayer made for by the writ petitioner. Normally, the inquiry is not quashed in case of failure to conclude the same rather suspension order is revoked. However, the said order was not challenged. Be that as it may, pursuant to the order of this Court, Inquiry Officer was appointed and notice was given to the delinquent-respondent. He also appeared but did not file show cause.

Subsequently, he filed an application for time on the ground of bereavement in the family. The said petition was also allowed but he did not file any show cause/ written statement. In such a situation, the Inquiry Officer submitted inquiry report holding the delinquent guilty of the charges.

6. Learned counsel for the respondent-employee, however, submitted that no charges were furnished to the delinquent. We have gone through the writ petition but no such question has been raised. There is no pleading that any written charge, as required under Article 16(1) of the Service Statutes of the University, was furnished to the delinquent. Such question was also not raised before the learned Inquiry Officer. There is no whisper of it in the order of the learned Disciplinary Authority, nor does this question appears to have been raised before the learned Single Judge. Furthermore, in paragraph 1 of the writ petition, it has been stated that this writ petition is against the order dated 6.11.1996, whereby and whereunder the writ petitioner has been removed from service with effect from 28.9.1996 on the basis of charges levelled against him. Obviously, the respondent is raising this question for the first time in Letters Patent Appeal. It is well known that this Court under Article 226 of the Constitution of India is not treated as appellate court in the matter of disciplinary proceedings. Opportunity was given to the delinquent during the course of the disciplinary proceedings, but it appears that he failed to raise any such question. At his instance, the proceeding was adjourned but he did not file a written statement/show cause, and after the order of punishment on the basis of the inquiry report was passed within time granted by this Court, the delinquent-employee filed a representation on 1.10.1996, requesting to furnish copy of the inquiry report and also relevant documents as required under Articles 16(7) and 16(1) and (2) of the Statute. On the pressure tactics adopted by the respondent through his Union, being the President of the Union, the Registrar of the University issued notice to show cause and kept the order of punishment in abeyance, but in spite of service of notice the delinquent-employee did not file any show-cause. This was the opportunity to the delinquent to raise all such questions but he did not do so in spite of the opportunity afforded to him and, as such, the Registrar recalled the order keeping the order of punishment in abeyance vide order dated 6.11.1996, which was challenged in the writ petition but the learned Single Judge, instead of setting aside the order dated 6.11.1996, set aside the order of punishment dated 28.9.1996.

7. It is obvious from the foregoing discussion that the question whether or not written charges were furnished to him was never raised during the course of the disciplinary proceedings nor before the learned Single Judge and, as such, he cannot be allowed to raise this question in Letters Patent Appeal. If this kind of submission is allowed, there shall be no end to the proceeding. In this regard, reference may be made to a decision in the case of *Bharat Singh & Ors. vs. State of Haryana & Ors.*, AIR 1988 Supreme Court 2181, wherein it has been held:-

"In our opinion, when a point which is ostensibly a point of law is required to be

substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

8. It is well established that technicality will not come in the way of grant of substantial justice. Therefore, we allow the application filed by the appellants during the pendency of the writ petition for extension of time for concluding the proceeding, though looking from another angle, in our opinion, may not be necessary. Thus, on consideration, as discussed above, we do not agree with the findings/order impugned and, as such, the Letters Patent Appeal is allowed. We respectfully disagree with the impugned order, and dismiss the writ petition. Consequently, the order of punishment passed by the learned Disciplinary Authority is upheld.