

(2001) 10 JH CK 0008
In the Jharkhand High Court
Case No : CWJC No. 1051 of 2000

Brahma Dutt Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 18
Representation of the People Act, 1951 — Section 134

Citation : (2001) 10 JH CK 0008

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R. Krishna, for the Appellant; Deepak Kumar Pd., JC to AAG, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order as contained in letter dt. 16.11.99 by which the services of the petitioner on the post of Headmaster has been terminated.

2. The petitioner was appointed as Headmaster in Gurunanak High School, Jamshedpur. He joined in the said post in 1966. In 1998 the Managing Committee of the school served a charge sheet on the petitioner levelling six charges against him. First five charges were in relation to non-compliance of the directions of the election authority for which a case has been instituted u/s 134 of the Representation of People Act, 1951. The sixth charge was in relation to giving false statement about his date of birth. A departmental proceeding was initiated and the Enquiry Officer submitted his inquiry report wherein all the charges levelled against the petitioner have been proved. On the basis of the enquiry report the impugned order of dismissal of the petitioner from service Has been passed.

3. Mr. R. Krishna, learned counsel appearing on behalf of the petitioner assailed the impugned order of dismissal as being illegal and contrary to the provisions of Bihar Non-Govt. Secondary School (Taking over of Management and Control) Act, 1981. Learned counsel submitted that the school in question has been given minority status by the State Govt. and the provisions of 1981 Act is regulatory measure in order to assess the correct findings of the minority institutions. Learned counsel submitted that before passing the order of dismissal or termination of the services of the petitioner, the Managing Committee is required to obtain sanction of Vidalya Sewa Board in terms of the provisions of Section 18 of the said Act. Admittedly the approval of the Board has not been taken and, therefore, the order of dismissal cannot be sustained in law.

4. In the counter affidavit filed by the State-Respondent, it is stated that the State Govt. has no control over the affairs of the school run by minority institutions and the Managing Committee is the authorised body to deal with the service conditions of the teaching and-non-teaching staff of the school including the petitioner. It is further stated that the service of the petitioner has been terminated by the Managing Committee of the school on various charges including the charge of tempering his date of birth in the records.

5. A separate counter affidavit has been filed by the respondent- school stating, inter alia, that the order of termination of services of the petitioner was passed after a full fledged departmental proceeding and when the charges were proved against the petitioner. It is further stated that the Managing Committee is not required to obtain prior approval from the School Service Board instead it may seek approval of the School Service Board after taking action.

6. Mr. R. Krishna, learned counsel for the petitioner, put reliance on the decision of the Supreme Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, and on a decision of the Patna High Court in the case of Mobarak Hussain v. State of Bihar 1993 PLJR 407.

7. In Frank Anthony Public School Employees Association case (supra) the Supreme Court was interpreting Section 8(4) of Delhi School Education Act and it was held that under the Act and the Rules the Management of the Minority School is required to take approval from the Authority. That decision is not at all applicable in the present case.

8. So far Mobarak Hussain's case is concerned, it rather, supports the case of the respondents. In that case the appointment of the writ petitioner by the Managing Committee was ultimately not approved by the Board and consequently the services of the petitioner was terminated. The petitioner assailed the said order before the Patna High Court. The Division Bench of the Patna High Court relied upon a decision of the Supreme Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, and held that the jurisdiction of the School Service Board is limited within the four corners of the status and it cannot give any opinion contrary to the provisions of the Statute. In

the instant case the only question which arises for consideration is whether before terminating the services of the petitioner prior approval of the Board was mandatory in terms of Section 18(ka) of the Act. This question has been fully answered by the Supreme Court in the aforesaid All Bihar Christian Schools Association case where their lordships observed:--

"Learned counsel for the petitioner took serious objection to the provisions contained in Clause (d) of Section 18(3) which lays down that the managing committee of a minority institution shall have power to remove, terminate, dismiss or discharge a teacher with the approval of the School Service Board. It was urged that the School Service Board. It was urged that the school Service Board has been imposed as a higher authority over the management, if the Board refused to grant approval to the disciplinary action taken by the management against a teacher, the management's right of administration would be affected adversely. The School Service Board enjoys blanket power on the management's right to take disciplinary action against its employees and therefore Clause (d) infringes with the minority's right of management. We do not find any substance in the submissions. Indisputably power to remove, dismiss, terminate or discharge a teacher from service is an essential attribute of management's right but Clause (d) does not invest that power on any outside agency. The power to take disciplinary action vests in the Managing Committee of the minority school it is required to exercise that power in accordance with the rules framed by it. Clause (d) requires that the managing committee shall take approval of the School Service Board in removing, terminating, dismissing or discharging a teacher from service. The managing committee is not required to obtain prior approval from the School Service Board, instead it may seek approval of the School Service Board after taking action. The School Service Board while considering the question of granting approval does not enjoy any unlimited power, it is required to consider if the managing committee has taken the disciplinary action in accordance with the rules framed by the managing committee itself. If the Board finds that the managing committee has taken action in accordance with rules, the Board has no option but to accord approval, but if the disciplinary action is taken contrary to the rules framed by the minority school itself, the School Service Board will be justified in refusing to accord approval. The School Service Board is not invested with any veto of blanket power without any guidance, on the other hand it has limited power and guidelines are prescribed for the exercise of such powers. Such a provision is reasonable to ensure that the rules framed by the minority school are followed and securing of employment of teachers is maintained and there be no arbitrary exercise of power. Clause (d) of Section 18(3) expressly provides that while considering the question of granting approval to the disciplinary action taken by the management of a minority institution the School Service Board shall scrutinize whether disciplinary proceedings had been taken in accordance with the rules and no more. Regulatory provisions requiring approval of disciplinary action taken by the management of a minority institution have been upheld by

this Court in a number of cases."

9. From perusal of the counter affidavit filed by the respondent-school it appears that the Secretary of the Managing Committee has sent a letter to the School Service Board seeking approval of the order of termination. It is, therefore, clear that the respondent-school has complied with the requirement of Section 18 of the Act. This Court is, therefore, of the view that prior approval of the School Service Board for taking disciplinary action against the teaching and non-teaching employees of the school is not necessary, instead it may seek approval of the Board after taking action.

10. For the aforesaid reasons, the impugned order needs no interference by this Court. This writ application is dismissed.

11. Writ petition dismissed.