
(2012) 09 PAT CK 0085
In the Patna High Court
Case No : CWJC No. 13530 of 2012

Dr. Ashok Kumar Jha

APPELLANT

Vs

Lalit Narayan Mithila University, Darbhanga and Others

RESPONDENT

Date of Decision : 10-09-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(1)(b)

Citation : (2013) 1 PLJR 581

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Abhinav Srivastava, for the Appellant; Lalit Kishore and Mrs. Nivedita Nirvikar, for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard the learned Counsel for the petitioner and the University. The petitioner, a Reader in Chemistry, C.M. Science College at Darbhanga, a constituent unit of the respondent University, is aggrieved by order of punishment dated 18.7.2012 transferring him to D.B. College, Jainagar, withdrawing two increments at the present basic pay and his erratic, impulsive and undisciplined behavior to be entered in his Service Book.

2. Learned Counsel for the petitioner submits he has had an unblemished career since appointment as Lecturer in 1982, till the present allegations. The UGC revised pay scale was implemented from 1.1.1996. Readers who had completed five years of service were entitled to the specified scale. Denial of the same led to a large number of writ applications culminating in certain orders passed on 5.7.2010 in CWJC No. 18552 of 2009. The failure of the University to comply the order led to institution of contempt applications. The petitioner, in the circumstances, on 7.7.2012, called the Vice-Chancellor on his mobile phone with a request to expedite matters in accordance with Court orders. The conversation lasted approximately 14-15 minutes. The petitioner was urging grievances, but unfortunately the Vice-Chancellor abruptly directed him to terminate the

conversation.

3. He was served with a show cause notice on 7.7.2012 alleging that he had used "Unparliamentary, filthy and ugly languages" during conversation in a high pitched voice. He was not prepared to listen and showed disrespect to the Vice Chancellor. He was opined as a habitual offender of Code of Conduct envisaged for University servants. The Vice-Chancellor informed the Principal, C.M. Science College of the utterances who also expressed his anguish and likewise opined that petitioner was habitual in breaking Code of Conduct detrimental to administrative and academic discipline.

4. This one alleged incident was construed to hold the petitioner to be a habitual offender of the Code of Conduct. The petitioner filed his reply, acknowledging conversation with the Vice-Chancellor on the concerned date over mobile phone with regard to grant of UGC pay scale, The actual conversation lasted 2-3 minutes only. The rest of the time was consumed by the Vice-Chancellor asking him to stay on line while he made enquiry from the office. No details of alleged foul language used or details of any alleged past conducts were mentioned. The petitioner specifically denied use of any foul language or that he was a habitual offender of the Code of Conduct. He also denied any untoward conduct at C.M. Science College at Darbhanga.

5. The matter was then considered by the Discipline Committee of the University under Statute 36 of the Bihar Universities Act (hereinafter called "the Statute") which arrived at the conclusion that his behavior was erratic, impulsive and undisciplined, confirmed by the Vice-Chancellor as Chairman of the Committee under the Statute.

6. Assailing the order it was next submitted that prudently, the Vice-Chancellor was the complainant. Even if he was the Chairman of the Discipline Committee he was required to reclude himself from the disciplinary process. Official bias is inherent in the decision making process and that no one could be a judge in his own cause. What was informed by the Vice-Chancellor to the Discipline Committee was not made known to the petitioner. The Discipline Committee did not hear the petitioner. The petitioner was also not privy to the conversation between the Principal and the Vice-Chancellor with an opportunity to defend. Referring to the counter affidavit it is submitted that the allegations for other untoward conduct is based on materials subsequent to the show cause notice (7.7.2012) at Annexure-D series to the counter affidavit which are all dated 17.7.2012, 11.7.2012 and 14.7.2012. On the contrary, the letter dated 17.7.2012 by the Professor and Head of Department of Chemistry states that the petitioner was a sincere, hardworking good Teacher as well as good research supervisor. The fact that it may refer to him as stubborn, impulsive and exuberant were only human traits which vary from one individual to another. The aforesaid was evidence of official bias. The impugned order of punishment is thus vitiated on more than one ground.

7. Learned Additional Advocate General No.-1 submitted that the conversation between the petitioner and the Vice-Chancellor is not denied. The contents of the conversation are privy to the Vice-Chancellor, a high functionary holding a high level post, There is no reason for such a high functionary to make reckless allegations against a Reader in the University. The petitioner has not alleged that in the past there was any animosity between him and the Vice-Chancellor for the latter to make such allegations. In the given facts of the case, due opportunity of defence has been furnished to the petitioner. The University stands by the contention of other unbecoming conduct of the petitioner. Even if it be ignored for the purpose of present discussion, the present single occurrence was sufficient to justify the impugned order to maintain discipline and academic standards in the University.

8. After the impugned order had been passed, the petitioner on 24.7.2012 at about 12.30 PM came to the University with unsocial elements alike students and indulged in unparliamentary, unbecoming and indecent slogan shouting. A report had been sent to the Officer Incharge of the Police Station within the University premises requesting him to register a FIR. In the facts and circumstances of the present case the Court may not interfere merely because it may be appropriate to interfere as it may send a wrong message to others in the University.

9. In the entirety of the episode, Learned Additional Advocate General-1 submits that the transfer of the petitioner to D.B. College, Jainagar, may not be interfered with for reason of the subsequent occurrence of 24.7.2012. If the University is of the opinion that it is necessary to keep him away from CM. Science College at Darbhanga, with regard to an incident, so long as the University has justification for the same the Court may not go into sufficiency of the reasons.

10. The maintenance of academic discipline and environment in the University is primarily the responsibility and prerogative of the Vice-Chancellor. The Court should not readily interfere with the same unless there be compelling reasons and even if it be so the limits of the interference should be circumscribed only to the extent required. The show cause notice did not mention the alleged foul language used. No past conduct was mentioned. The petitioner had denied the allegations. The communication by the Vice-Chancellor to the Discipline Committee or Principal was not informed to the petitioner. The Discipline Committee did not hear the petitioner. Materials furnished to the Discipline Committee were not made available to the petitioner with an opportunity to rebut thus relying on evidence behind his back. The Vice-Chancellor was the complainant and ultimately approved the recommendation of the Discipline Committee. The Vice-Chancellor may not have participated in the deliberations of the Discipline Committee is not relevant. The counter affidavit states that the Discipline Committee was only a recommending body. The report dated 24.7.2012 also does not mention the alleged foul language used. The mobile conversation being an admitted fact does not prove the contents of the conversation. Prudence required in a case of the present nature that the

Discipline Committee should have given him a personal hearing. Was it mere voicing of protest much to the dislike of the University or furthermore?

11. The petitioner as an employee of the University did not stand denuded of his fundamental rights and cannot be denied the right to ventilate his grievances. The right to dissent is a sine qua non to democracy and voice of the aggrieved cannot be stifled. If channels of communication are blocked authoritarianism and chaos shall rein. But the right to dissent and criticize is not absolute. It has to be circumscribed by reasonable restriction and cannot include the right to do so in a manner contrary to that permitted or sanctified by law.

12. A grievance for denial of revised UGC scale despite Court orders cannot be stated to be impertinence or indiscipline ipso facto. The petitioner had a fundamental right under Article 19(1)(a) of the Constitution to express his grievances through speech. Calling up the Vice-Chancellor on his mobile may not have been the most appropriate mode and it may have been advisable if he had sought an appointment and held discussions across the table. It would have obviated allegations of the present nature. Likewise the protest on 24.7.2012 would also stand protected under Article 19(1)(b) of the Constitution. But both these rights as observed earlier shall remain subject to reasonable restrictions. Right to Freedom of Speech and Expression shall not include the right to use unbecoming language and indulge in unruly protest. The moment limits of civilized protest and communication under Articles 19(1)(a) & (b) of the Constitution are crossed, the right is lost.

13. The recommendations of the Discipline Committee have been approved by the Vice-Chancellor. Even if he was the Chairman of the Committee under the Statute, fairness required him to reclude himself from the decision making process. The Vice-Chancellor was the complainant and evidence of the conversation. He could not be the judge and executioner both. He was required to reclude himself from the decision making process. It is not actual bias or personal bias which alone is relevant, but the real likelihood of official bias also from the ordinary man's point of view which is relevant. Official bias has to deduced from circumstances and need not be specifically proved. In Hindustan Petroleum Corpn. Ltd. Vs. Yashwant Gajanan Joshi and others, it was observed:--

14. Thus taking in view the entire facts and circumstances of the case we are inclined to take the view that the respondent was right in contending that Mrs. A.R. Gadre may have bias while determining the amount of compensation as she herself is a litigating party in this very matter in the High Court against the respondent. An apprehension thus in the mind of the respondent is well founded and on this ground we do not find any justification to interfere with the order of the Bombay High Court holding that the appointment of Mrs. Gadre was not valid....

14. In disciplinary matters fairness in the decision making process must not only be maintained but must also appear to have been followed. The requirements

with regard to fairplay and fairness in the decision making process was noticed in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, observing:--

15.... But then under the circumstances it was improper to have included Naqishbund as a member of the selection board. He was one of the persons to be considered for selection. It is against all canons of justice to make a man judge in his own cause. It is true that he did not participate in the deliberations of the committee when his name was considered. But then the very fact that he was a member of the selection board must have had its own impact on the decision of the selection board. Further admittedly he participated in the deliberations of the selection board when the claims of his rivals particularly that of Basu was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the selection board there was a conflict between his interest and duty. Under those circumstances it is difficult to believe that he could have been impartial. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct. It was in the interest of Naqishbund to keep out his rivals in order to secure his position from further challenge. Naturally he was also interested in safeguarding his position while preparing the list of selected candidates.

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries, Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative

enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George vs. University of Kerala the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

15. The importance of the absence of details in the charge-sheet with regard to alleged use of foul language was noticed in Biecco Lawrie Ltd. and Another Vs. State of West Bengal and Another, but was repelled on grounds of corroborative evidence in the deposition of a departmental witness:--

28. It was made the major bone of contention that the charge-sheet was bad as it did not mention specifically the abusive language used by the respondent.

16. The petitioner is alleged to have spoken in a high pitched voice, with the Discipline Committee opining that his conduct was erratic, impulsive and undisciplined. It did not arrive at any finding for use of foul language or recurrent indisciplined behaviour. The opinion of the Discipline Committee with regard to the conversation was a highly subjective issue which may vary from one individual to another as observed in Rama Kant Misra Vs. The State of Uttar Pradesh and Others, :--

8. What has happened here. The appellant was employed since 1957. The alleged misconduct consisting of use of indiscreet or abusive or threatening language occurred on November 18, 1971, meaning thereby that he had put in 14 years of service. Appellant was Secretary of the Workmen's Union. The respondent management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years" service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. When it is said that language discloses a threatening posture it is the subjective conclusion of the person who hears the language because voice modulation of each person in the society differs and indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with any subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty....

17. The presumption that the Vice-Chancellor was a high functionary and his actions cannot be doubted is not absolute overriding the rights of the petitioner as held in Pannalal Binjraj Vs. Union of India (UOI), :--

27. This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and

unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment (Vide *Gulf, Colorado, etc. vs. W.H. Ellis*). There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law (Vide *Dinabandu Sahu vs. Jadumoni Mangaraj*). What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

18. The rights of a Government servant to protest subject to reasonable restrictions was considered in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, observing as follows:--

18. We have rejected the broad contention that persons in the service of Government form a class apart to whom the rights guaranteed by Part-III do not, in general, apply. By accepting the contention that the freedoms guaranteed by Part-III and in particular those in Article 19(1)(a) apply to the servants of Government we should not be taken to imply that in relation to this class of citizens the responsibility arising from official position would not by itself impose some limitations on the exercise of their rights as citizens...

19. In *The Punjab National Bank Ltd. Vs. Its Workmen*, the Supreme Court set aside the punishment of such workmen who had resorted to a peaceful pen down strike.

20. The right to protest of a Government servant was again noticed in *M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation*, :--

17.... If freedom of speech of an individual Government employee is circumscribed by the need for efficiency or discipline or confidentiality in public interest, the individual exercises his freedom of speech in a manner conflicting with these requirements at the risk of facing disciplinary action. This does not mean that legitimate action discreetly and properly taken by a Government servant with a sense of responsibility and at the proper level to remedy any malfunction in the organisation would also be barred. However, such is not the case here. Also, a person who legitimately seeks to exercise his rights under Article 19 cannot be told that you are free to exercise the rights, but the consequences will be so serious and so damaging, that you will not, in effect, be able to exercise your freedoms. For example, a person may be told that you are free to express your opinion against the State, but if you do so, you will be put behind bars. This is clearly deprivation of freedom of speech...

18. A somewhat similar view seems to have been taken in other Commonwealth jurisdictions as well. The appellant drew our attention to the case of *Marvin L. Pickering vs. Board of Education of Township High School*. In that case a public school teacher wrote a letter to the editor of a local newspaper criticising the way

in which the Board of Education and the superintendent of schools had handled past proposals to raise new revenue for the schools. After the letter was published, the Board of Education determined that its publication was detrimental to the efficient operation and administration of the schools of the district. An action was taken against the teacher dismissing him from service. The teacher contended that his remarks and comments in the letter were protected by the constitutional right of free speech. The United States Supreme Court said:--

A State has interests as an employer in regulating the speech of its employees that differ significantly from those that it possesses in connection with regulation of the speech of the citizenry in general. Where a public school teacher contends that his dismissal is violative of his constitutional right to free speech, it is necessary to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern, and the interest of the State, as an employer, in promoting the efficiency of the public services that it performs through its employees.

The Court after examining the contents of the letter held that the letter had made no allegations against any individual official, nor had it made any personal allegations against any member of the Board of Education. The letter was confined to criticising only the policy. In the view of the Court, this would not, in any way, affect the efficient functioning of the teacher within the organisation. The United States Supreme Court, therefore, set aside the order of dismissal...

21. The aforesaid discussion leads to the conclusion that the charge was vague, the allegation for use of foul language or unruly protest not substantiated or proved, the decision making process was fundamentally flawed, and the impugned order stifles the fundamental freedoms of speech and association available to employees also. The order dated 18.7.2012 is held not sustainable and is accordingly set aside but without prejudice to the rights of the University afresh in accordance with law, if so advised. The application is allowed.