
(1995) 12 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 7533 of 1995

Dr. Vidyapati Prasad Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0012

Judgement

S.J. Mukhopadhyay, J.—In this case the order of suspension dated 19th of April, 1994, as contained in Annexure-1 is under challenge. By amendment petition the Petitioner has also challenged a letter dated 17th of November, 1995, as contained in Annexure-23, by which he has been intimated that one Shri S.M.I.F. Alam, retired District and Sessions Judge has been appointed as an enquiry officer for conducting the departmental enquiry, with respect to him. The notice given by the enquiry officer-retired District and Sessions Judge, dated 18th of November, 1995, as contained in Annexure-23/1 is also under challenge.

2. The brief facts of the case are as follows:

The Petitioner is an employee of Respondent-Baba Saheb Bhim Rao Ambedkar Bihar University, Muzaffarpur (hereinafter referred to as the "University"). He was functioning as Controller of Examinations, prior to the issuance of the order of suspension. The Petitioner was placed under suspension by the impugned order dated 19th of April, 1994 (Annexure-1). Thereafter the Respondents issued one charge-sheet on 25th of April, 1994 (Annexure-3) and constituted a 2-man Enquiry Committee by another order dated 25th of April, 1994 (Annexure-2) to hold departmental enquiry. Subsequently another charge-sheet (2nd charge-sheet) was issued by order dated 26th of May, 1994 (Annexure-4). The Petitioner filed show cause reply before the authorities/2-man enquiry committee and denied the allegations made by two different charge-sheets. Such show cause replies were filed on 3rd of June, 1994 (Annexure-5) and the 6th of June, 1994 (Annexure-6) respectively.

According to the Petitioner, without any rhyme or reason the 2-man enquiry

committee constituted by order dated 25th of April, 1994 (Annexure-2) was superseded and another enquiry committee was constituted on 29th of October, 1994 (vide Annexure-3), appointing one Dr. N.K.P. Sinha as Convener, along with others (2nd Enquiry Committee). The Convener of the subsequent enquiry committee, before whom the Petitioner appeared on number of days. Another enquiry committee was constituted by the Respondents vide memo dated 21st of July, 1995 (Annexure-10), of which Dr. K.K. Jha, Head of the Department of Botany was made Convener along with others (3rd Enquiry Committee).

3. It is stated that the Petitioner appeared before both the aforesaid enquiry committees headed by Dr. N.K.P Sinha and Dr. K.K. Jha respectively. The enquiry committee headed by Dr. N.K.P. Sinha has already submitted an enquiry report; whereas the other enquiry committee headed by Dr. K.K. Jha has not yet submitted its enquiry report. In spite of the same, when the Respondents sat tight over the matter, the Petitioner moved before this Court by filing the present writ petition challenging the order of suspension dated 19th of April, 1994 (Annexure-1).

During the pendency of the present writ petition, a retired District and Session Judge, namely, Shri S.M.I.F. Alam has been appointed as enquiry officer to conduct the enquiry relating to certain charges against the Petitioner, which has been communicated vide letter dated 17th of November, 1995 (Annexure-23), the same has also been challenged in the present writ petition by amendment petition. As stated above, notice issued by the said retired District and Sessions Judge dated 18th of November, 1995 (Annexure-23) is also under challenge.

4. So far as the order of suspension is concerned, the Counsel for the Petitioner submitted that the order of suspension (Annexure-1) has been issued by the Respondents in complete violation of the provisions laid down under Rule-10 of Chapter-I of the Statute. While relying on Sub-rule (2) of Rule 10 aforesaid, the Counsel for the Petitioner submitted that before suspending the Petitioner, the Respondents should have asked the Petitioner to proceed on leave. According to him, if the Petitioner would have refused to go on such leave and in an enquiry a prima facie case would have been made out against the Petitioner, then only it was open to the Respondents to suspend the Petitioner. It is alleged that the aforesaid procedure having not been followed the Petitioner having not been asked to proceed on leave and no fact finding enquiry having been made to make out a prima facie case against the Petitioner, prior to the issuance of the order of suspension, the Respondents could not have suspended the Petitioner.

5. So far as the appointment of a retired District and Sessions Judge as an enquiry officer is concerned, the Counsel for the Petitioner submitted that the Respondents, including the Vice-Chancellor of the University has got no jurisdiction to appoint "an outsider" like the retired District and Sessions Judge, as an enquiry officer to hold an Internal enquiry like the departmental enquiry. It was submitted by the Counsel for the Petitioner that the Petitioner has got no objection to appear before the enquiry committee, constituted by the

Respondent-University, who have already conducted such enquiry on different dates.

6. A counter affidavit has been filed on behalf of the Respondents. The Counsel for the University submits, so far as the order of suspension is concerned, that the same has been issued by the Respondents, in consonance with the aforesaid Rule 10 of the Statute, allegation being grave and earlier prima facie case having been found against the Petitioner. The Counsel for the University also tried to highlight the allegations, which have been leveled against the Petitioner different charge-sheets.

7. So far as the appointment of the outsider as enquiry officer is concerned, the Counsel for the University submits that under the Bihar State Universities Act, 1976 and/or under the Statute there is no bar for appointment of a retired District and Sessions Judge as an enquiry officer. It was contended that a retired District and Sessions Judge is more competent to hold an enquiry, which is quasi-judicial proceeding. The relevant provisions of Rule 10 of Chapter-I of the Statute reads as follows:

...10(1) A University servant should be placed under suspension for reasons to be recorded in writing and while doing so the following principles may be observed:

(i) If a University servant is being prosecuted on a criminal charge, he should be placed under suspension if he has been refused bail by the Court and has been committed to prison.

(ii) In case of criminal prosecution, a University servant should be suspended if the charge against him is such that on being found guilty of it, he is likely to be sentenced to a term of Imprisonment or on which he would be dismissed or removed from service, in a departmental enquiry. In such cases however the order of suspension need not be passed in every case immediately after cognizance has been taken. In suitable cases it may be passed after charges have been framed.

(2) Where a University servant is being proceeded against departmentally on charges of gross-misconduct, bribery, corruption or dereliction of duty, the question of suspension should be considered with reference to the prima facie evidence available against him. If there are good reasons to believe, on the basis of the material available at the time of the initiation of the proceedings, that the University servant has been guilty of gross-misconduct or dereliction of duty or bribery or corruption which, if proved, would lead to his dismissal or removal, he should be placed under suspension. In cases in which such prima facie evidence is lacking at the start, the question of suspension of the University servant may be kept pending till the findings of the enquiry officer are available. In such cases he should be required to proceed on such leave as may be due to him, and, if there is no leave to his credit, on extra-ordinary leave. On the conclusion of the enquiry, if it is found that the University servant is guilty of gross- misconduct or

dereliction of duty or bribery or corruption which would entail his dismissal or removal from service, he should be placed under suspension.

(3) In all cases where there are reasons to believe that the University servant, if allowed to continue in active service, might attempt to tamper with the evidence, he should be required to proceed on such leave as may be due to him, or, if there is no leave to his credit, on extra-ordinary leave. If he refuses to proceed on leave, he may be suspended:

Provided that the period of suspension of such University servant shall not exceed one year from the date of suspension except in circumstances beyond the control of the University....

It will be evident from Sub-rule (2) of Rule 10 aforesaid that if prima facie evidence is available against a person, in such case, a person can be proceeded against departmentally, and can be placed under suspension. In such a situation there is no question of holding a fact finding enquiry, after asking the delinquent charged employee to proceed on leave. It is only in such cases if a prima facie evidence is lacking, a fact finding enquiry is to be made and at the stage of such fact finding enquiry the charged-employee can be asked to proceed on leave. Such being the position, according to me, there is no necessity to ask the charged employee to proceed on leave and to make fact finding enquiry, where there is a prima facie evidence, which is available. In the case of the Petitioner, it has not been stated by the Petitioner, that there was no prima facie evidence that was available, prior to the issuance of the order of suspension. Apart from the same, the Petitioner himself has challenged the order of suspension after more than one year three months.

In this background, it is not open to the Petitioner to challenge the validity of order of suspension, at this stage, nor the same is maintainable on merit.

However, taking into note the proviso to Rule 10 of the Statute aforesaid, as the Petitioner has continued under suspension for more than one: year, with respect to the allegations as mentioned in the said order of suspension, and as the Respondents have not stated the circumstances as to why the Petitioner should be allowed to continue under suspension even on completion of one year's period, I have no other option but to revoke the order of suspension dated 19th of April, 1994 (Annexure-1) with immediate effect.

8. So far as the appointment of an outsider as an enquiry officer is concerned, according to me, such appointment is not permissible and is also Illegal, on the facts and circumstances of the case of the Petitioner.

In the case of K.R. Deb Vs. The Collector of Central Excise, Shillong, taking into note the provisions of C.C.S. (C.C.A.) Rules, the Hon''ble Supreme Court, held that in absence of specific rule, there was no occasion of change of one enquiry officer by another'' enquiry officer at one or other stage. If, there is anything lacking in the enquiry, though it is always open to the disciplinary authority to

differ with the finding of the enquiry officer, and/or to ask the said enquiry officer to proceed with further enquiry, but after replacing such enquiry officer no new enquiry officer can be appointed, which is not warranted by the rules. In the said case, the Hon"ble Supreme Court held that such action amounts to harassing the charged- employee. In the present case, it will be evident from the preceding paragraph "hat the Respondents appointed one after another enquiry committee, out of the employees of the Universities. Such enquiry committees are still in existence and it has not been stated that the members have retired from service and/or left the service of the University. Such being the position, though it was open to the Respondents to ask such enquiry committee to look into the other charges, and/or to take other evidences but there was no occasion to appoint a retired District and Sessions Judge as "enquiry officer".

Apart from the same, for the purpose of a departmental enquiry by a retired District and Sessions Judge, without giving "an order of appointment", such person cannot hold the internal departmental enquiry. There being no such power vested with the Respondents under the Act, and/or Statute to appoint an outsider as an enquiry officer, I hold that the appointment of retired District and Sessions Judge as enquiry officer in the case of the Petitioner is completely illegal.

9. That apart, it is to be taken into note that a retired District and Sessions Judge, who has been appointed as an enquiry officer is a legally trained person, having vast legal experience of proceeding, whereas the Petitioner is to defend himself of his own. The Respondents will not provide an Advocate to the Petitioner, at the cost of the University, to defend himself in the enquiry. In such circumstances, the Petitioner will be in great disadvantage and will not be able to, defend himself in the proper manner.

10. Accordingly, while revoking the order of suspension (Annexure-1) from today, I direct the Respondents to proceed in the departmental enquiry, which is to be conducted by the enquiry committee, which has already been constructed by the Respondent-University. The Respondents are prohibited from conducting such departmental enquiry through a retired District and Sessions Judge. The Respondents are also directed to conclude the departmental proceeding against the Petitioner, with respect to all the charge-sheets, within a period of one year from the date of receipt production of a copy of this order.

11. The writ petition is disposed of with the aforementioned observation and direction.

12. No cost.