

(1969) 07 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 902 of 1968

Kailash Chaudhary

APPELLANT

Vs

The President, Board of Secondary Education

RESPONDENT

Date of Decision : 16-07-1969

Acts Referred:

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 5(2), 6, 6(1)

Citation : (1969) PLJR 569

Hon'ble Judges : S.C. Misra, C.J;S. Wasiuddin, J

Bench : Division Bench

Advocate : J.N.P. Verma, Arun Bholay and Ramesh Chandra Sinha, for the Appellant; Jai Narain Singh, for the Respondent

Final Decision : Allowed

Judgement

S.C. Misra, C.J.—This is an application by the Secretary of the K.K. High School, Sanjhauli, in the district of Shahabad, for a writ of certiorari, quashing the order of the President, Board of Secondary Education, Bihar (opposite party no. 1), directing the petitioner to reinstate Shri Brajendra Nath Singh (opposite party no. 4), an assistant teacher of the school, who was discharged by the managing committee. The circumstances in which the order of discharge was passed on opposite party no. 4 were that on the 4th April, 1967, which was a second day of the Annual Examination of the Bihar School Examination Board in the school premises, which was one of the centres for holding that examination, the teacher concerned was on invigilation duty in one of the examination rooms in the school in the first sitting. It was alleged that while engaged in the work of invigilation, Shri Brajendra Nath Singh, copied out in his own handwriting the questions of English Paper II and was found trying to pass the questions out of the centre premises through an outsider. The head-master of the school, who was the centre superintendent, detected the foul play and recovered from the person of opposite party no. 4 the copied out question paper, The headmaster brought the matter to the notice of the Board observer who was present in the centre. Such

conduct on the part of opposite party no. 4 was treated as gross betrayal of the trust reposed in him and also a flagrant violation of the code of conduct of a teacher and, accordingly, he was debarred from acting as invigilator on and from the 5th of April, 1967. The headmaster also made a report of the incident, to the petitioner who was secretary of the school. The petitioner thereupon held a careful enquiry into the allegations and found it to be correct. The petitioner thereafter, placed the matter before the managing committee of the school at its meeting on the 24th of April, 1967. The managing committee scrutinised the matter carefully and held opposite party no. 4 guilty of malpractice in sending out examination questions which was conduct unworthy of a teacher bringing ill-repute to the whole institution and for this he was suspended from school service with effect from the 5th April, 1967.

2. Opposite party no. 4 was accordingly directed to show cause as to why his services should not be terminated. The order of suspension and charges were duly communicated but Shri Brajendra Nath Singh did not submit any explanation either before the managing committee or the petitioner but, instead of it, he wrote to the Sub-divisional Education Officer, Sasaram, as also to the District Education Officer, Shahabad. The managing committee having not received any explanation or any reply from the suspended teacher, passed resolution on the 13th of May, 1967, terminating his services, (Sic) The District Education Officer, Shahabad (opposite party no. 3) wrote to the petitioner, vide his letter no. 3689, dated the 3rd August, 1967, requesting him to reinstate opposite party no. 4. The petitioner was surprised at this unauthorised communication from the District Education Officer (opposite party no. 3) and, accordingly, he wrote to the Director of Public Instructions, Bihar, Patna, enquiring as to whether the District Education Officer was a competent authority to pass order of reinstatement in such cases. The Deputy Director of Public Instructions (Secondary), Bihar, Patna, sent a reply to the petitioner, vide his letter no. 3465, dated the 9th September, 1967, telling him that a teacher whose services are terminated by the managing committee of the school could prefer an appeal from it to the President, Board of Secondary Education, Bihar, who alone had the authority to pass necessary orders in such appeals. On receipt of the letter from the Deputy Director, Public Instructions (Secondary), Bihar, the petitioner naturally felt that it was not necessary for him to recall the order of termination of service passed on opposite party no. 4. The petitioner simply sent a copy of the letter of the Deputy Director, Public Instructions (Secondary), to the District Education Officer, Shahabad, for information.

3. According to the petitioner, the District Education Officer (opposite party no. 3) felt hurt at the letter of the petitioner and made the question of reinstatement of opposite party no. 4 a matter of her personal prestige and forwarded to the President of the Board of Secondary Education, Bihar, the same letter which was forwarded to her by opposite party no. 4. Opposite party no. 4 did not prefer any appeal himself before the Board of Secondary Education. The President of the Board of Secondary Education directed the Secretary of the Board to fix up the

20th of December, 1967, as the date for hearing the appeal inviting the parties concerned to be present on the date fixed. The petitioner received that communication on the 11th of December, 1967. The petitioner, however, in the absence of any petition of appeal preferred by opposite party no. 4 found it difficult for him to present the case of the managing committee. Accordingly he sent a telegram to the Secretary of the Board of Secondary Education for extending the date of hearing. He also requested the Secretary to provide him with a copy of the appeal presented by opposite party no. 4. The Secretary of the Board, however, instead of sending any copy of the petition of appeal, sent a copy of the letter written by opposite party no. 4 to the District Education Officer, Shahabad, treating it as an appeal preferred by opposite party no. 4.

4. The next date fixed for hearing was the 18th January, 1968, and the petitioner was unfortunately ill hence he found it impossible for him to attend the hearing of the case on the 18th January, 1968. A letter of request was accompanied by a medical certificate granted by a M.B.B.S. physician. Accordingly, the petitioner was granted time till the 7th of February, 1968. That was the impression created on the mind of the petitioner but, to his great surprise, the petitioner received a letter from the Secretary, Board of Secondary Education, dated the 26th of January, 1968, from the Board office, shifting back the date of hearing to the 27th of January, 1968, which was the date next following the day of the receipt of the letter. The petitioner was highly disconcerted at this communication and, accordingly, sent a telegram praying for another date. No reply was, however, received to this and the appeal was heard ex parte by the President, Board of Secondary Education.

5. On the 27th of January, 1968, the President, Board of Secondary Education, heard the so-called appeal filed by opposite party no. 4 and passed order for reinstatement of opposite party no. 4 to the post of assistant teacher in K.K. High School, Sanjhauli. That order of opposite party no. 1 (President of the Board of Secondary Education) was communicated to the petitioner through the Secretary of the Board, vide his forwarding memo no. 9305-8, dated the 19th of March, 1968 (Annexure 2).

6. Having received the order of the President of the Board of Secondary Education, the petitioner wrote to him a letter on the 22nd of March, 1968, protesting against the ex parte hearing and the consequential order setting out his difficulty in not being able to attend. He prayed again for a fresh opportunity to be given to the petitioner to place all the evidence at his disposal in support of the lawful and justified act of the managing committee. It was also stated by the petitioner in his subsequent letter that since there was no regular appeal filed by opposite party no. 4, the Board of Secondary Education had no authority to pass any order. Moreover, the teacher concerned was a temporary hand who had no right of appeal. The reply to this letter was sent by the Secretary of the Board vide his letter no. 17995-97, dated the 30th of May, 1968, that there being no provision in law for review of the order of the President of the Board of

Secondary Education, the discharged teacher must be reinstated within a week of the receipt of the letter, failing which necessary action would be taken for disobeying the order of the President of the Board. Further correspondence between the petitioner and the Secretary of the Board annoyed the latter still more, who threatened to dissolve the managing committee of the school and to replace it by an ad-hoc committee. Hence the present application. The petitioner challenges the validity of the order passed by the President of the Board of Secondary Education contained in Annexure 2 as also his letter of threat contained in Annexure 3, characterising them as void and illegal.

7. In a counter-affidavit filed on behalf of opposite party no. 4, there is a complete denial of the allegations levelled against him. It has been stated that opposite party no. 4 was not indulging or conniving in the use of unfair means nor was he ever caught passing cut chits or leaking the questions as alleged. No report of this kind was made to the observer or to anybody during the examination time. It was only after the examination period was over and the observer and others had left the examination centre that a small piece of paper with certain writing thereon was shown to him and it was enquired from him from a distance whether the writing was in his hand. Opposite party no. 4 completely denied that it was his writing. Action was taken against opposite party no. 4 on such flimsy material and that he was stopped from the work of invigilation and suspended by the school managing committee. He was subsequently discharged without giving him any opportunity for showing cause. He admits, however, that the managing committee did terminate his services although the termination was on insufficient cause. He did approach the District Education Officer and also the Sub-divisional Education Officer and sought to justify the direction of the District Education Officer, Shahabad, contained in Memo No. 3689, dated the 3rd August, 1967. It has been urged that the order was perfectly legal in terms of Rule 324(4) of the Education Code. The first objection raised on behalf of the opposite party, as a preliminary point, is that the proper remedy of the petitioner, if he felt aggrieved by the order passed by the President, Board of Secondary Education, was to prefer an appeal before the Secretary, Education Department, Government of Bihar, and the same not having been done, it must be taken that the petitioner had failed to exhaust the remedy which was open to him. It has been urged by learned counsel on behalf of the petitioner that Section 6 of the Bihar High School (Control and Regulation of Administration) Act, 1960, on which reliance has been placed by the opposite party is not relevant, as it does not provide for an appeal in the present circumstances by an aggrieved party to the Secretary. Section 6(1) of the Act runs thus:

6(1) Any person aggrieved by an order made by the Board under Clause (b) of Section 4 or u/s 5 may, within sixty days of such order, prefer an appeal to the authority appointed in this behalf by the State Government and the appeal shall be disposed of in the prescribed manner.

It has been urged that Section 6(1) refers only to an order made by the Board under Clause (b) of Section 4 or u/s 5. Clause (b) of Section 4 relates to grant of recognition of schools imparting instructions in secondary education and authorises the Board to suspend or withdraw such recognition. It is only when the question relates to grant, suspension or withdrawal of recognition of a school that an appeal may be preferred from the order of the Board to the State Government. Clause (2) of Section 5 relates to suspension of the managing committee of the school by the Board for a period not exceeding six months or dissolution of the managing committee. The question of discharge of a teacher serving the High school is not covered by Clause (b) of Section 4 or Sub-section (2) of Section 5. Section 6(1), therefore, is not the proper remedy which was available to the petitioner and, in fact, that was what was conveyed to the petitioner by the Education Secretary, Government of Bihar. In my opinion, the preliminary objection raised by learned counsel for opposite party no. 4 has no substance and it must be overruled.

8. The next question for consideration is whether the petitioner who was merely a temporary teacher, could prefer an appeal to the President, Board of Secondary Education. (Sic) (1) *Kabutra Kuer V. Board of Secondary Education* (1963 B.L.J.R. 858) it has been held in regard to the headmaster of a Secondary school, whose services were terminated during the period of his probation, that he had no right of appeal to the President Board of Secondary Education, against the decision of the managing committee. His status as an appointee on probation continued so long as he was not confirmed in the post. The order of the President of the Board of Secondary Education passed in appeal for reinstatement was ultra vires and without jurisdiction. Reference was made in that judgment to Clause 2 of the Government Resolution No. 11/R 4-01/56-E-5172 dated the 7th September, 1955, as also to Clauses 14, 15, and 18 of the same resolution. Clause 14 provides that the termination of service of a person during the period of probation, during the period in which he holds a temporary appointment and on retrenchment of a post, will not amount to discharge or dismissal. Whereas Clause 15, in so far as it is relevant, stands thus:--

15. A teacher shall not be discharged or dismissed save and except on ground of proved inefficiency, conduct involving moral turpitude or gross negligence of duty or behavior likely to prove subversive of discipline, etc. etc.

Clause 16, so far as relevant, stood thus:--

16. The decision of the Managing Committee under Clause 15 shall be immediately communicated to the person concerned in writing. The person concerned shall have the right to appeal through the proper channel in respect of orders in which the teacher has been discharged or dismissed. Appeal must be preferred to the Inspector of Schools within thirty days of the receipt of the punishment order.....

Referring to the circumstances of the case, it was held that so long as the head-

master concerned was not made a confirmed headmaster by the managing committee, he had no right of appeal under Clause 15 to the President, Board of Secondary Education. Another Division Bench of this Court in (2) Gandhari Singh V. The Managing Committee of Shri Durga Uchcha Vidyalaya, Naya Bazar, Lakhisarai (M.J.C. No. 1096 of 1964--decided on the 1st of April, 1965) has laid down that in that case the discharge of the petitioner, who was headmaster of Shri Durga Uchcha Vidyalaya, Naya Bazar, Lakhisarai, was made under Clause 15 and as such it was held that the appeal would be competent under Clause 16. In that case, too, the headmaster was not a confirmed teacher of the school and as such it was held by the President, Board of Secondary Education, that he had no right to appeal to the President from the order of discharge passed by the managing committee. Learned Judges in the above case preceded upon the clause under which order of discharge is passed. This apparent conflict between these two decisions was the subject matter of a Full Bench decision of this Court in the case of (3) Virendra Kumar Sharma V. Sada Nand Chakraverty (M.J.C. No. 807 of 1961 decided on the 16th August, 1965) in which also the petitioner's employment as headmaster (Sic) had been terminated by the ad hoc committee. The Full Bench, however, did not go into that question and held that the termination of the services of the headmaster in that case was made out under Clause 15 but the order only purported to terminate his services as a temporary incumbent consequent upon the appointment of another person as headmaster. It is thus clear that if a temporary teacher's appointment is terminated not under Clause 15, which relates to moral turpitude or gross negligence of duty or behavior likely to prove subversive of discipline or any other good or sufficient reasons which may make his retention on the school staff no longer desirable, then and then only an appeal may lie to the President, Board of Secondary Education, even if the teacher happens to be a merely temporary teacher, Where, however, the termination of a temporary teacher is on the ground that the school managing committee does not require the services of a particular temporary teacher any longer, then Clause 15 is not attracted. In the present case, no doubt, the charge against opposite party no. 4 was that he copied out questions of the Annual Board Examination and passed them out of the examination hall, obviously, with a view to render unfair assistance to the examinees. This would cast a stigma on the character of the teacher concerned and as such this would be a case covered by Clause 15. In Kabutra Kuer's case the decision related on the ground that the headmaster concerned had not passed the departmental examination and as such he was not confirmed and, therefore, Clause 15 was not attracted and as such the President, Board of Secondary Education, had no jurisdiction to hear the appeal or to make the order for reinstatement of the Head-master. In my opinion, therefore, there is no real conflict between the two decisions although, apparently, it looks that there is a conflict between them. On principle also, since the right of appeal is given to a teacher without specifying whether he is a confirmed teacher or a temporary teacher, or a teacher on probation, it is clear that when the termination of service of a temporary teacher on probation is made on the ground that his services are

no longer required, the question of right of appeal does not arise and the President, Board of Secondary Education, cannot be held to be competent to dispose of an appeal to be preferred by such a discharged teacher. If, however, the termination of service arises from some charges being levelled against the teacher concerned, which would cast a stigma on his career, it must be held that he has a right of appeal as teacher, as was held in Kabutra Kuer's case, to the President, Board of Secondary Education. In this case such a charge, in fact, was levelled and, normally, his appeal would be held to be competent.

9. It is, however, to be borne in mind that in the present case several other questions have been raised on behalf of the petitioner that opposite party no. 4 did not choose to send any reply to the charges levelled against him by the managing committee of the school which he was bound to do and without which his appeal would not be competent. It has also been contended that he did not file a regular petition of appeal but only brought the matter to the notice of the District Education Officer. There is substance in both these objections. Even apart from these matters, learned counsel for the petitioner has urged, and it has not been denied by learned counsel for opposite party no. 4, that he has already been employed as a teacher in another school and his appointment has been approved by the department, so that there is no question of any stigma being passed upon his character on account of the charges which were levelled against him as a teacher of this school. In the circumstances therefore, it must be held that the order passed by the President, Board of Secondary Education, reinstating opposite party no. 4 cannot be upheld and more so, as it has been alleged that after having fixed a later date (7th February, 1968) for hearing of the appeal, he heard it on an earlier date (27th January, 1968) which is wholly unjustifiable. It is notable that this was communicated to the petitioner so late he received it on 25th January 1968 only. In the result, therefore, the application is allowed and the order of the President, Board of Secondary Education, reinstating opposite party no. 4 as a teacher of this school, is set aside. In the circumstances of the case, however, there will be no order as to costs.

S. Wasiuddin , J.

I agree.