

(1965) 09 PAT CK 0009
In the Patna High Court
Case No : Misc. Judl. Case No. 884 of 1961

Lakshman Shastri

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-09-1965

Acts Referred:

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 8(2)
Constitution of India, 1950 — Article 226, 311

Citation : AIR 1967 Patna 160 : (1969) 1 LLJ 444

Hon'ble Judges : Tarkeshwar Nath, J; Kamala Sahai, J

Bench : Division Bench

Advocate : S.N. Dutta and Pradyumna Narayan Singh, for the Appellant;
Balbhadra Prasad Singh, Shreenath Singh and Nagendra Prasad Singh No. 1, for
the Respondent

Final Decision : Dismissed

Judgement

Sahai, J.—The petitioner was employed as a Head Pandit in the Government-aided Balbhadra Multi-purpose High English School, Babhangama, in Muzaffarpur District (hereinafter to be referred to as the School). By a resolution of the Managing Committee of the school, dated the 9th December, 1959, he was discharged from service. Information relating to this discharge was conveyed to him by the Secretary in his letter No. 478, dated the 10th December, 1959 (annexure XIII to the main application). The petitioner filed an appeal before the President of the Board of Secondary Education (hereinafter to be referred to as the Board). The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, called upon the petitioner as well as the Secretary of the School to appear before him, along with all their documents and witnesses, on the 11th June, 1961. The petitioner examined five witnesses before him. He also produced some documents on the 2nd July, 1961. After fully hearing the parties, the Regional Deputy Director submitted his report to the President of the Board, who, by an order dated the 5th August, 1961, rejected the appeal. The petitioner has filed the present application in this Court on the 25th September, 1961. He

has prayed for issue of a writ of certiorari, quashing the order dated the 10th December, 1959, of the Secretary (Managing Committee) of the Balbhadra High English School, whereby he discharged the petitioner from service as a teacher in the school with effect from the 9th December, 1959, and also the order of the President of the Board, whereby he rejected the appeal. As I have already mentioned, the Secretary did not pass an order of discharge; but by his letter dated the 10th December, 1959, he merely conveyed to the petitioner the resolution of the Managing Committee dated the 9th December, discharging the petitioner from service with effect from the 9th December. 1959.

2. I may now briefly mention the material facts of the case. The petitioner was appointed temporarily as a Head Pandit in the school in January. 1953. He was made permanent in 1957.

3. It is stated on behalf of the opposite party in the counter affidavit that, at a meeting of the Managing Committee held on the 30th September, 1959, under the Presidentship of the Sub-divisional Officer of Silamarhi (ex-officio President of the Committee), the Committee suspended the petitioner with effect from noon on the 1st October, 1959, and directed an explanation to be called for from the petitioner relating to certain charges which were framed against him. It also appointed a subcommittee of four of its members to enquire into the charges.

4. By letter No. 390, dated the 1st October, 1959, the Secretary of the school (opposite party No. 2) conveyed the charges to the petitioner, called for an explanation from him, and informed him of his suspension in accordance with the resolution of the Managing Committee, saying further that the Managing Committee would finally decide the matter. In substance, the petitioner was charged with having incited the students to go on strike, held out threats to those students who did not join in the strike, with having plotted to create hatred against the Principal and some teachers and held out threats of physical violence against them. On the 3rd October, some more charges were added against the petitioner, and they were conveyed to him by letter No. 395. The fact that the petitioner was suspended with effect from noon on the 1st October was reiterated in this letter. On the 14th October, letter No. 398 was sent by the Secretary to the petitioner, asking him to submit an explanation in connection with the charges framed and conveyed to him under Idlers Nos. 390 and 395 within a week from receipt of the letters. Admittedly, the letters were served upon the petitioner on the 18th October. He submitted his explanation on the 22nd October.

5. By letter No. 418, dated the 8th November, 1959, the petitioner was informed that the charges against him and his explanation would be considered by the sub-committee on the 14th November in the District Board Dak Bungalow at Dumra, and that he should be present there with all his evidence. By letter No. 430, dated the 14th November, he was informed that the meeting of the sub-committee had been adjourned due to the illness of the Convener Shri Kumar Ratneshwari Nandan Singh. No date was fixed in that letter: but, by letter No.

431, dated the 15th November, he was informed that the sub-committee would hear the matter on the 22nd November. By letter No. 439, dated the 21st November, he was informed that the sitting of the sub-committee would be adjourned because Dr. Nagendra Prasad Srivastava, one of the members of the sub-committee, was not available owing to illness. By letter No. 444, dated the 25th November, he was informed that the meeting of the sub-committee would take place at the same Dak Bungalow on the 29th November, 1959, at 7-30 A. M.

The sub-committee assembled at the Dak Bungalow accordingly on the 29th November. The petitioner was also present, and he filed a list of 35 witnesses. According to the opposite party, the case against the petitioner was closed on the 29th, and the sitting of the subcommittees was adjourned to the 30th November for defence. Although the petitioner's case is that he was making a grievance all the time that the enquiry should be held in the school premises, the opposite party has stated that he never made any grievance relating to the venue of the enquiry until the 30th November, when he filed a petition praying that the enquiry be held in the school premises. The opposite party has also alleged that several witnesses mentioned in the list of the 29th November were present in the compound, but the petitioner did not examine any, where-upon the sub-committee came to the conclusion that he was following dilatory tactics, and refused to adjourn the hearing. The petitioner, according to the opposite party, made a long statement, which was recorded, and then the sub-committee concluded the hearing.

6. The report of the sub-committee was considered by the Managing Committee at its meeting on the 9th December, 1959, when it passed two resolutions in connection with this matter. By one resolution, it provided that the suspension of the petitioner would be with effect from the 19th October and not with effect from the 1st October. By the second resolution, it discharged the petitioner from service.

7. In the main application, the petitioner has taken several grounds in support of his prayer for issue of a writ. A summary of the main grounds is as follows:

(i) That the shifting of the date of the petitioner's suspension from the 1st to the 19th October is illegal and without jurisdiction.

(ii) That the fact that the petitioner remained under suspension for more than thirty days offends against Rule 12 of the Government notification dated the 7th September, 1955, which has been published in the Bihar Gazette (Extraordinary) dated the 23rd March, 1959, and is, therefore, illegal.

(iii) That the District Board Dak Bungalow at Dumra is at about eight miles from the school premises. The fact that the sub-committee met to consider the charges against the petitioner at that Dak Bungalow instead of the school premises was illegal and also prejudicial to the petitioner.

(iv) That a second notice as contemplated by Article 311 of the Constitution was

necessary, and that the petitioner's discharge without giving him such a notice is illegal.

(v) That the quorum for a meeting of the Managing Committee consists of eight members, but only seven members were present at the meeting of the 9th December. The names of seven persons alleged by him to have been present have been given. He has thus alleged that the constitution of the Managing Committee on that date was bad.

8. Mr. Dutta, who has appeared on behalf of the petitioner, has pressed some of these grounds. I shall indicate the grounds which he has pressed, while dealing with each of the grounds one by one. I may mention at this stage, however, that Mr. Balbhadra Prasad Singh, who has appeared on behalf of the opposite party, has urged that the petitioner has already taken a new service. In an affidavit sworn by the Principal of the school on the 16th August, 1965, it has been stated that the petitioner was appointed as a Lecturer in Sanskrit in the S. K. G. College at Sitamarhi, which appointment he continued to hold until the 8th June, 1965, and that he has again been appointed a Lecturer in the same College on the 15th July, 1965, and that he still continues to hold that appointment. Mr. Dutta has submitted before us that this statement is correct, and that the petitioner has no desire at all to go back and join the school as a teacher. In my opinion, this by itself is a ground for refusing to grant the petitioner's prayer for issue of a writ, for a writ cannot be issued merely to suit the whim (sic) of a petitioner when there is no purpose at all to be served. I propose, however, to consider also the grounds for quashing the order of discharge, which have been taken by the petitioner; but, before proceeding to do so, I wish to discuss the principles which must be kept in view in a case of this kind.

9. The function of maintaining discipline in the school and passing necessary orders of appointment or of imposition of any punishment, including discharge, is vested in the Managing Committee subject to the appellate jurisdiction of the President of the Board. When an application for issue of a writ against the order of such a committee is filed, this Court does not and cannot act as a Court of appeal. Ordinarily, there will be no interference by this Court, and no writ will be issued if an alternative remedy, which is equally efficacious, is available to the petitioner. The existence of such a remedy does not, of course bar the exercise of the power of this Court to issue a writ: but this has to be kept under consideration. This Court has to supervise the working of judicial and quasi-judicial Tribunals and hence it is absolutely necessary to interfere when rules of procedure or rules of natural justice are ignored or when a flagrant or what has been called a speaking, error of law is committed. I may, with advantage, refer to the observations of Mukherjea, J. in *T.C. Basappa Vs. T. Nagappa and Another*, . His Lordship has said at p. 257 (of SCR); (at p. 444 of AIR):

"The second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial Tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari the superior

Court does not exercise the powers of an appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based."

His Lordship has also said at p. 258 of the report (SCR) (at p. 444 of AIR):

"A " Tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amendable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g.. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

10. In Union of India (UOI) Vs. T.R. Varma, . Venkatarama Ayyar, J. has observed at page 503:

"Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all the reliefs to which he may be entitled, including some which would not be admissible in a writ petition. It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed Vs. The Municipal Board, Kairana, , the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs".

11. I will now proceed to consider the grounds taken by the petitioner in the application.

12. Ground No. (i)--Mr. Dutta has not pressed this ground and has not urged that any illegality has been committed by the Managing Committee in shifting the date of suspension from the 1st to the 19th October. Admittedly, the order of suspension was served upon the petitioner on the 18th October, and, therefore, I think that the Managing Committee rightly directed that his suspension would commence from the 19th October and not from an earlier date.

13. Ground No. (ii)--This has been pressed by Mr. Dutta, u/s 8 of the Bihar High Schools (Control and Regulation of Administration) Act, 1960, power has been given to the State Government to make rules. In Sub-section (2) of this section, it has been provided that, until the State Government makes rules, a collection of provisions, resolutions and orders of the State Government or of the Director of Public Instruction, Bihar, which was published in the Bihar Gazette of the 23rd March, 1959, would in so far as they are not inconsistent with the provisions of the Act or the Constitution, be deemed to be rules made under the Act. The

petitioner has, therefore, made reference to the rules published in the Extraordinary issue of the Bihar Gazette, dated the 23rd March, 1959. The note to Rule 12 of the rules published in that Gazette provides, among other things, that a meeting of the Managing Committee shall be convened within a fortnight from the date of suspension of a teacher, and that, in no case, a teacher shall "be kept under suspension for a period exceeding 30 days or, in case he has filed an appeal, up to two months or till the disposal of his appeal". Mr. Dutta has argued that, even if the petitioner's suspension is taken to have commenced on the 19th October, the provisions of this note have been infringed because the meeting of the Managing Committee was held on the 9th December, and the suspension of the petitioner continued for more than thirty days before the Managing Committee passed the resolution whereby the petitioner was discharged.

It is well settled that the word "shall" does not necessarily indicate that the provision is mandatory; it may be directory. The object of the provision has to be considered, and it has to be seen whether a time clause in it is a matter of substance. In other words, the time clause will not be considered to be mandatory unless its non-observance will result in the object of the provision being frustrated. In *Ram Chandra Prasad Sahi and Others Vs. State of Bihar and Others*, a Division Bench of this Court had to consider whether the provisions of Rule 3 of the Bihar Panchayat Election Rules are mandatory or directory. That rule provided that the first election of the Mukhiya and others shall take place within a period of four months from the date of publication of the notification under Sub-section (1) or (3) of Section 3 of the Act; but the District Magistrate was given power to extend the period. Their Lordships held that the provision was only directory and not mandatory. *Untwalia, J.*, who delivered the judgment of the Bench, has quoted an observation of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, which is as follows:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intention is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow from construing it the one way or the other".

His Lordship has stated:

"The failure of the public authorities to adhere to the said requirement strictly would not make the election null and void, as to hold it so far acts done in neglect of requirement of the rule would work serious general inconvenience or injustice to persons who have no control over those entrusted with public duty and that, at the same time, would not promote the main object of the Act or the Rules, which is to establish the Gram Panchayat and to hold the elections as soon as possible".

In the present case also, it is certainly necessary that the suspension of a teacher should not be kept in force for a longer period than necessary. The sub-committee, which was to hold the enquiry could not meet on earlier dates either because of the illness of the convener or that of one of the members. It met as soon as it could, and then it heard the parties. It is not known when it submitted its report; but, as the enquiry itself was held on the 29th and 30th November, it may be assumed that the report was submitted in the early part of December. The Managing Committee met and arrived at its decision within a few days on the 9th December. It cannot be said that any object of the provisions has been frustrated. If it is held to be mandatory serious inconvenience will ensue because it may be that, for reasons beyond the control of the Managing Committee, it may not be able to decide the matter exactly within thirty days from the date of suspension.

14. I may also refer to an unreported decision of a Full Bench of this Court in *Shiveswar Prasad Sinha Vs. The District Magistrate of Monghyr and Another, Narasimham, C. J.* who has delivered the judgment of the Bench, has quoted what has been stated in *Maxwell on Interpretation of Statutes*. 11th Edition, page 369, as follows:

"It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time."

His Lordship has also quoted a passage from *Sutherland Statutory Construction*, 3rd Edition, Volume 3, at page 102, which is as follows:

"A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others is directory unless the nature of the act to be performed, or the phraseology of the statute, is such that the designation of time must be considered a limitation of the power of the officer."

Keeping in view the principles as enunciated in the above quotations, the learned Chief Justice has stated that the factors to be kept in view in deciding whether the time limit given in a provision is directory or mandatory are as follows:

"(1) The general scheme of the Act and the context of the other provisions.

"(2) Whether the time limit is insisted upon as a protection for safeguarding the right of property of a person.

"(3) Whether the statute relates to the performance of a public duty by a public officer.

"(4) Whether serious general inconvenience or injustice to persons who have no control over those entrusted with the duty would arise if the provision is held mandatory and not directory.

"(5) Whether such a decision would not promote the main object of the

Legislature.

"(6) Where the statute itself expressly provides for the result of non-compliance with the statutory provision, what can reasonably be held to be the intent of the Legislature."

15. No provision has been made in the note to Rule 12 or any other rule as to what is to happen if the Managing Committee meets after the expiry of more than a fortnight from the date of suspension or passes its final resolution more than thirty days after the date of suspension. In these circumstances, I am clearly of the opinion that the provision relating to time in the note to Rule 12 is not mandatory but directory. The Managing Committee concerned must try to dispose of a matter of this kind as quickly as is reasonably possible; but its order of discharge cannot be held to be vitiated simply because it does not follow exactly the time schedule provided in the note to Rule 12.

16. Ground No. (iii)--At first, Mr. Dutta pointed out article 354 (2) and article 355 (ix) of the Bihar Education Code. Eighth Edition, in order to show that all meetings of the Managing Committee should be held in the school premises. On this basis, he attempted to argue that the meeting at the Dumra Dak Bungalow was illegal. When, however, he found that the meeting at that Dak Bungalow was that of the sub-committee to enquire into the case against the petitioner, he abandoned his argument as to the illegality of the meeting. He, however, pressed the point that serious prejudice was caused to the petitioner as the sub-committee met at a distance of eight miles from the school premises to hold the enquiry.

The reasons for the meeting of the subcommittee to have been held at Dumra have been given by the opposite party in detail in paragraphs 4 to 18 of the counter affidavit sworn on the 6th September, 1962. In short, the opposite party's case is that the petitioner instigated the students of the school to go on strike and even formed an action committee for the purpose, that the petitioner held out threats against the life of the Headmaster and other teachers, that some irresponsible persons, at the instigation of the petitioner, attempted to create a breach of the peace and to disturb a meeting of the Managing Committee, which was being held in the school premises on the 13th September, 1959, that the irresponsible persons held a meeting in the school premises on the same date and passed resolutions condemning the Managing Committee, that various persons, at the instance of the petitioner, attempted to create a breach of the peace as a result of which the Headmaster had to send informations to the police authorities on the 1st October, 14th October and 15th October, 1959, and that, in the atmosphere engendered by these actions of the petitioner, it was neither possible nor feasible for the subcommittee to hold its sitting in the school premises or near about. The opposite party also alleges, as I have already said, that the petitioner raised no grievance against the sub-committee holding the enquiry at Dumra until the 30th November when he filed a petition in which he made such a protest. On that date, however, he did not examine witnesses

named by him in his list of the 20th November, who were present in the compound of the Dak Bungalow. It seems to me that, in view of the statements on oath made on behalf of the opposite party, the members of the sub-committee could not help being apprehensive that, if they held the enquiry in the school premises, great disturbance would be created. In my opinion, it was not at all unreasonable for the sub-committee to hold the enquiry in the Dak Bungalow at Dumra.

17. Mr. Dutta has urged that it is against the rules of natural justice for the enquiry against the petitioner to have been held at a distance of eight miles from the school premises because this made it very difficult for him to produce his witnesses before the enquiring committee. In my judgment, rules of natural justice do not require that an enquiry against a person must necessarily be held at the spot. Had it been so. all trials held at sub-divisional or district headquarters would be vitiated for offending against rules of natural justice because they are not held on the spot. It is manifest, therefore, that no rule of natural justice has been infringed.

18. Besides, the petitioner had witnesses present in the compound on the 30th November, and he did not examine them. This shows that his real purpose was not to examine witnesses but to disrupt the enquiry by the subcommittee if it acceded to the petitioner's request to hold its sitting in the school premises. I may mention at this stage that the petitioner examined five witnesses before the Regional Deputy Director of Education on the 11th June, 1961, at the same Dak Bungalow. There was, therefore, no reason why he could not examine his witnesses before the sub-committee at that place.

19. No rule has been shown to us to the effect that an enquiry by an officer or a subcommittee against the teacher of a school must necessarily be held in the premises of that school. This point must also be, therefore, rejected.

20. Ground No. (iv)--The provisions of, Article 311 of the Constitution are quite clear. They have no application to a person who does not hold one of the posts referred to in that Article. Indeed, Mr. Dutta has not urged that Article 311 is applicable in this case. The case of Joseph Mundassery v. Manager. St. Thomas College, Trichur AIR 1954 Trav Co 199 was also a case where a teacher had filed an application for issue of a writ as his services had been terminated. The learned Advocate, who appeared on his behalf, admitted that Articles 310 and 311 of the Constitution did not, in terms, apply to the case, As was done by the learned Advocate in that case, Mr. Dutta has said that the principle of Article 311 of the Constitution is applicable in this case, and a second notice should have been given by the Managing Committee to the petitioner; but he has not made reference to any rule which makes such a second notice necessary. Charges were served upon the petitioner, and full opportunity was given to him to defend himself. He did not fully avail himself of that opportunity. But that could not be a ground for giving him a fresh notice. There is thus no merit in this point also.

21. Ground No. (v)--Mr. Dutta has not pressed this point for the simple reason that it has been stated by the opposite party in paragraphs 20 and 21 of the counter affidavit that Shri Ram Padarath Chaudhary, a member of the Managing Committee, was also present at the meeting of the 9th December, 1959, and thus the total number of members then present was 8 out of 11.

22. Mr. Dutta has added two more grounds for issue of the writ, as prayed for. The first ground is that the petitioner was not present before the Managing Committee at its meeting on the 9th December, and that he was not heard by that committee before it passed the resolution for his discharge. He has not been able to point out any specific statement in the petitioner's application, asserting these facts. That being so, his argument on this point cannot be entertained.

23. The only other point which Mr. Dutta has urged is that the President of the Board of Secondary Education acted illegally in dismissing the petitioner's appeal by merely saying "rejected" without giving any reason. He has not been able to urge that reasons were not given by the Regional Deputy Director of Education in his report to the President. In fact, no such complaint has been made by the petitioner in his application. That being so, I am of opinion that it was not necessary for the President to deliver a reasoned judgment; he could well dispose of the appeal by merely saying "rejected" on the basis of the Regional Deputy Director's report.

24. For the reason which I have given above, the petitioner has not made out a case for issue of a writ, as prayed for by him. His application is dismissed with costs which will be payable to the Secretary (Opposite Party No. 2) on behalf of the School. Consolidated costs are assessed at Rs. 200/-.

Tarkeshwar Nath, J.

25. I agree.