

(1990) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1427 of 1982

Managing Committee Dr. Hari Ram Co. Education Higher
Secondary School

APPELLANT

Vs

Shri Rattan Lal Sharma and Others

RESPONDENT

Date of Decision : 31-10-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 2 ILR (P&H) 347 : (1991) 99 PLR 175

Hon'ble Judges : J.V. Gupta, C.J;R.S. Mongia, J

Bench : Division Bench

Advocate : B.R. Mahajan, for the Appellant; P.S. Patwalia, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—Shri Rattan Lal Sharma, respondent in -the present Letters Patent Appeal, was working as a Principal in Dr, Hari Ram Coeducation Higher Secondary school, Datarpur, District Hoshiarpur. A charge-sheet dated 18th October, 1970, containing as many as 12 charges, was served on the said Shri Rattan Lal Sharma by the President of the Managing Committee of the school. Almost all the charges related to some embezzlement of school funds. After receipt of the reply to the charge-sheet, a three member Enquiry Committee was appointed to go into the charges. Enquiry Committee conducted the enquiry as envisaged by the Punjab Aided Schools (Security of Service) Act, 1969 (hereinafter called the Act) and held the Principal Shri Rattan Lal Sharma as guilty of all the charges. After agreeing with the enquiry report, the Managing Committee decided to dismiss the said Principal from service. As required u/s 3(2) of the Act, the confirmation of the proposed punishment was sought from the Deputy Commissioner. The respondent Sari Rattan Lal Sharma made a representation against the proposed punishment before the Deputy Commissioner and after hearing the parties, the Deputy Commissioner confirmed the order of dismissal vide order dated 18th March, 1971 (Annexure P 9) Appeal

of the respondent before the Commissioner, Jullundur Division, was also rejected vide order dated 3rd December, 1973 (Annexure P 10).

2. Aggrieved by the said order, respondent Shri Rattan Lal Sharma, had filed a writ petition in this Court. It may be stated here that one Maru Ram who was a teacher in the same school was one of the members of the Enquiry Committee, which went into the charges against respondent-Principal. Shri Maru Ram had been inducted in the Committee as a representative of the teachers, which is the requirement of the Government instructions to have one representative or the teachers on the Enquiry Committee. Shri Maru Ram was also a witness to prove Charge No. 12, to which a reference shall be made hereinafter. The learned Single Judge held that the Enquiry Committee was biased, inasmuch as Shri Maru Ram who was a witness against the Principal was also a member of the Enquiry Committee. Since, according to the learned Single Judge the Enquiry Committee was biased, therefore, the report was biased and the order of the Deputy Commissioner confirming the order of dismissal of the writ petitioner as well as the order of the Commissioner dismissing his appeal were liable to be set aside being based on a biased enquiry. On these premises, the writ petition was allowed and the above-said two orders were set aside. Dissatisfied with the judgment of the learned Single Judge, the Management of the school has come up in Letters Patent Appeal.

3. Charge No. 12, to prove which, Shri Maru Ram had appeared as a witness, was in the following terms :-

"12. The following amounts are reported to have been used by you and are unaccounted for :-

A sum of Rs. 129-37 on account of amalgamated fund for the month of December, 1969 given to you by Sh. Maru Ram teacher in charge amalgamated fund."

There is no doubt that to prove this charge, Shri Maru Ram had stepped into the witness box.

4. Mr. B. R. Mahajan, learned counsel for the appellant, had submitted before us that the plea of bias was not taken before the Authorities under the Act, i.e. Deputy Commissioner and the Commissioner and even before the learned Single Judge the plea of bias had not been taken in the form that since Shri Maru Ram was a witness in the enquiry he should not have been a member of the Enquiry Committee. According to the learned counsel, only a very vague sort of plea regarding bias was taken before the learned Single Judge. The counsel went on to submit that the learned Single Judge erred in allowing the plea of bias to be raised for the first time in the writ petition. He further argued that while confirming the order of dismissal, the Deputy Commissioner had not even remotely touched Charge No. 12, to prove which Shri Maru Ram had appeared. The Deputy Commissioner had dealt with Charges No. 6, 10(b) and Charge No. 11 and had asked for the explanation on these charges from the delinquent

officer and since he could not satisfy the Deputy Commissioner on these charges, the order of dismissal was approved. Similar was the argument regarding the appellate order of the Commissioner.

5. On the other hand, Mr. P. S Patwalia, learned counsel for the respondent-Principal submitted that at the very initial stage, his client had objected to the induction of Sri Maru Ram in the Enquiry Committee. but the Management had illegally rejected his objection vide order of the Managing Committee, dated 2nd December, 190 (Annexure P-S). He further submitted that the Deputy Commissioner had confirmed the order of dismissal on the basis of the entire enquiry report including Charge No. 12 and since the enquiry was biased, no further action could be taken by the Deputy Commissioner on the said report. To the point raised by the learned counsel for the appellant that the writ-petitioner had not raised the point of bias before the lower Authorities, the learned counsel for the respondent submitted that the plea of bias is a legal plea and can be allowed to be raised at any time as no further facts are to be pleaded and everything was apparent on the face of the record as far as the question of bias was concerned. He went on to argue that once it is held that the Enquiry Committee was biased, it is not necessary to show or prove that any prejudice was caused because of the bias. For this proposition, he strongly relied on the Supreme Court judgments in *Ranjit Thakur v. Union of India and Ors.* 1988 (1) S. L. R. 61 and 5. *Parthasarathi v. State of Andhra Pradesh* 1974 S. L. W. R. 22. He also cited *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, in support of the contention that if a point goes to the root of the matter and can be decided on the basis of the material already on the record, then the point should be allowed to be raised, though not raised already before the lower Authorities.

6. After hearing the learned counsel for the parties at length, we are of the opinion that the Letters Patent Appeal deserves to be allowed and the judgment of the learned Single Judge set aside.

7. It has not been brought on the record as to what objection and in what form it was taken regarding the appointment of Sri Maru Ram as one of the members of the Enquiry Committee. The objections which had been filed by the respondent have not been brought on the record, but we have the order passed thereon in the form of Annexure P 5 and as far as the objection regarding the appointment of Sri Maru Ram as a member of the committee was concerned, it was dealt with as under:-

"Similarly your objection to the appointment of Sri Maru Ram in the enquiry committee is ill conceived, unfounded, unjustified and invalid because Sri Maru Ram is as good a member of the managing committee as any one else and as such a member is entitled to act on any sub committee formed by the managing committee and even perhaps more in this case because to give you a fair trial, it was necessary to have a teachers union's representative on the enquiry committee. Mr. Maru Ram represented the Union of the staff of the school and is

thus your own representative as such."

The plea of bias is not such a plea which cannot be waived or not pressed at all. If the respondent was so serious about the induction of Shri Miru Ram as one of the members of the inquiry Committee and he being biased on account of being a witness to prove one of the charges, such a plea should have been raised before the Authorities below i.e. the Deputy Commissioner as well. Admittedly, no such plea of bias was taken. Even the learned Single Judge had noticed that such a plea was not taken before the Authorities below. We are of the opinion that a plea of bias if not taken before the Authorities concerned, cannot be allowed to be raised for the first time in a writ petition. Such a point having not been taken before the Authorities below, would be deemed to have been waived. The learned Single Judge was in error to allow such a plea to be raised for the first time before him. The pleadings regarding bias of Shri Maru Ram are also very vague in the writ petition and when asked to point out the plea regarding bias, the learned counsel for the respondent referred to paragraphs 6(b) and (g) of the writ petition containing the grounds of attack. These are reproduced below:-

"I"(b) That the enquiry committee was biased, partial and inimical towards the petitioner. During the middle of the enquiry Shri Maru Ram, a member of the staff with whom the petitioner was not on good terms and who was the root cause of whole trouble, was joined in the enquiry committee and after his inclusion the whole enquiry was summed up in slipshod manner as is apparent from Annexure P. 5 and P. 6. On 2-12-1970 his prayer for copies was rejected and on the same day the report was submitted without even hearing the petitioner. The whole enquiry is biased and partial.

16(g)-That the enquiry committee was not an independent and impartial committee. The president himself along with Shri Maru Ram who was joined later on have acted in a hasty manner as has been narrated in preceding paragraphs."

8. It would be seen from the pleading above that nowhere it was stated that since Shri Maru Ram was a witness against the petitioner for proving one of the charges, therefore, one could not be inducted as a member of the Enquiry Committee, and, was therefore, biased. The whole pleading* is that Shri Maru Ram was inimical towards the petitioner. Apart from the bald allegation in the writ petition, there is nothing to support that Shri Maru Ram was biased because of enmity. The argument of the learned counsel for the respondent that the point of law can be allowed to be raised at any time if it does not require any further pleadings is unexceptionable. However, we are of the opinion that a plea of bias is not; a point of law as it depends upon facts and also that it can be waived or given up. That being the position, we hold that the learned single Judge was not correct in allowing such a plea to be raised.

9. We are also of the view that the Deputy Commissioner gave opportunity to the writ petitioner to explain certain charges and was not at all influenced by Charge

No, 12 to prove which, Shri Maru Ram had appeared. From the perusal of the order it is quite evident that the Deputy Commissioner was impressed with Charges No. 6, 10(b) and 11 which according to him, were sufficient to confirm the order of dismissal. The Commissioner also did not find anything wrong with the enquiry as such.

10. For the reasons recorded above, we allow this appeal, set aside the judgment of the learned Single Judge and dismiss the writ Petition. The parties will bear their own costs.