

(2019) 02 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3634 Of 2013

Prof. Sheo Nandan Singh

APPELLANT

Vs

Bihar Agricultural University

RESPONDENT

Date of Decision : 26-02-2019

Acts Referred:

Citation : (2019) 02 PAT CK 0043

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Abhinav Srivastava, Krishna Nandan Singh, Chandra Mohan Singh, Ram Krishna, Tushar Vaibhav

Final Decision : Dismissed

Judgement

The present writ petition has been filed for quashing the officer order dated 31.03.2012 issued by the Bihar Agriculture University, Sabour, Bhagalpur under the signature of the Vice-Chancellor of the University by which the services of the petitioner has been terminated in terms of clause 13.3 (1) and 13.3(3) (2b-iv). The petitioner has further prayed for reinstatement in service alongwith all consequential benefits.

The brief facts of the case are that the petitioner was initially appointed against the post of Assistant Professor-cum-Junior Scientist in the services of Rajendra Agriculture University, Pusa, Samastipur on 28.02.1993 whereafter he had joined at Bihar Agriculture College, Sabour. The case of the petitioner is that when he was working as an Assistant Professor-cum-Junior Scientist at Bihar Agriculture of University, Sabour, Bhagalpur, he was directed by the University of the college to submit his original certificate of matriculation, Intermediate, B.Sc. Agriculture and M.Sc. Agriculture, which were submitted on 01.02.2003. Thereafter, the petitioner was transferred from Bihar Agriculture College, Sabour, Bhagalpur to Pulse Research Centre, Mokama and the petitioner had requested the Principal of Bihar Agriculture College, Sabour to return the original certificates.

It is the case of the petitioner that he had proceeded on medical leave from 08.03.200 and had remained as such till 06.10.2000. However, during the said period the petitioner was put under suspension by office order dated 27.03.2010 on the charges of disobedience and negligence in executing the orders with respect to submission of his matriculation certificate. The petitioner is said to have joined on 15.11.2010 in the office of the Director, Research, Agriculture College, Pusa, Samastipur, which was the headquarter fixed by the University during the period of suspension of the petitioner. The petitioner is stated to have challenged the order of suspension before this Hon'ble Court by filing a writ petition bearing C.W.J.C. No. 15059 of 2010 and this Hon'ble Court by an order dated 17.05.2011 had directed the University to verify the matriculation certificate with regard to the date of Birth of the petitioner herein and it was also clarified that if the matriculation certificate is not available, the onus would lie on the petitioner. The petitioner had challenged the said order dated 17.05.2011 before the learned Division Bench in L.P.A. No. 1546 of 2011, however, the same was dismissed by an order dated 18.11.2011, relevant paragraph whereof is reproduced herein below:-

"In view of the aforesaid dispute the learned single Judge has directed that the date of birth of the appellant be verified from the matriculation certificate of the appellant. The appellant is directed to produce such certificate."

The Bihar Agriculture University, Sabour by an order dated 26.08.2011 appointed the Conducting Officer in the regular departmental proceedings drawn against the petitioner earlier and a copy of the said resolution along with the charge sheet was forwarded to the petitioner herein as also to the Conducting Officer. At this juncture, it would be relevant to reproduce herein below, the chargesheet issued to the petitioner:-

Kinds of charge

Sl No.

Particular of charges leveled

Proof of charges

Disobedience and negligence in executing the various orders of the University and non submission of Matriculation Certificate for determination of the age. Besides this non compliance of the Hon'ble Court's order passed in CWJC No. 15059 of 2010 dated 17.05.2011.

1.

A series of letters were sent to you for submission of Matriculation Certificate for determination of your age, and it was directed to join your Headquarters, i.e. under Director, Research, RAU, Pusa immediately but neither you have

submitted your Matriculation Certificate nor joined your Headquarter till date, even after publication in the Newspaper "Dainik Jagran, Patna" dated

07.08.2010. You have also not complied the Hon'ble High Court order passed in CWJC No. 15059 of 2010 dt. 17.05.2011. Accordingly you have committed a gross disobedience and negligence in your duty as per the provision contained under Clause 13.09 of the RAU Statutes.

A series of letter were sent to you, out of which the Letter No(s). 1068, dt. 28.08.2008, 1750, dt. 19.12.2009, 1592 dt. 17.02.2010 & 160 dt. 08.07.2010 are attached for example including the advertisement made in daily Newspaper "Dainik Jagran, Patna" dated 07.08.2010. A copy of the Court's Order passed in CWJC No. 15059 of 2010 dt. 17.05.2011 is also enclosed.

Subsequently by an order of the same date dated 26.08.2011, the Headquarter of the petitioner was shifted from the office of the Director, Research, Rajendra Agriculture University, Pusa to the office of Associate Wing-cum-Principal, Bihar Agriculture College, Sabour. The Enquiry Officer had then submitted the enquiry report dated 26.12.2011 wherein the Enquiry Officer had found that the petitioner had failed to submit the matriculation certificate for determination of the age and had also not complied with the order of the Hon'ble High Court dated 17.05.2011 passed in CWJC No. 5059 of 2010 as also had not submitted the S.S.C. pass examination certificate issued by the concerned State Secondary Examination Board.

Thereafter, a second show cause notice dated 6th October, 2012 was issued to the petitioner herein, enclosing a copy of the enquiry report which was replied to by the petitioner by his letter dated 03.02.2012 wherein the petitioner had admitted that he had not submitted the matriculation certificate, however, no satisfactory reply was given regarding disobedience of the orders of the University as also the order dated 17.05.2011 passed by the Hon'ble High Court in CWJC No. 15059 of 2010. Thereafter, the disciplinary authority i.e. the Vice Chancellor of the University had by an office order dated 31.3.2012 terminated the services of the petitioner herein.

The learned counsel for the petitioner has submitted that no adequate opportunity was provided to the petitioner to defend himself, hence the principles of natural justice have been violated. It has been submitted that though the petitioner had submitted the school leaving certificate but the same has been ignored. The learned counsel for the petitioner has further argued that the Board of Management is the appointing authority of the petitioner, hence the Vice Chancellor could not have passed the order of punishment, thus the order of punishment dated 31.03.2012 is without jurisdiction. Lastly, it has been submitted that the punishment of termination awarded to the petitioner is grossly disproportionate to the allegations leveled against the petitioner herein, hence the same is required to be set aside on this ground alone.

Per contra, the learned senior counsel for the respondent-University has submitted that the petitioner is a habitual litigant, he has flagrantly disobeyed not only the orders of this Court but also the orders and directions of the

University and its officials. It is submitted that the misconduct of the petitioner is apparent from three documents i.e. the one dated 16.11.1983 i.e. a self filled format regarding details of the concerned employee (filled up by the petitioner herein) showing the date of birth of the petitioner to be 25.12.1952 and second is the document dated 17.01.1984 (Annexure-3 to the writ petition), wherein the petitioner himself has filed an application for grant of U.G.C. scale showing his date of birth as 25.12.1952 and the third document is the service book purportedly opened in the year 1988 wherein the date of birth of the petitioner has been shown to be 25.12.1958, the date of birth, which is being harped upon by the petitioner herein, hence it is apparent that the petitioner has engaged in committing a fraud in order to shift his date of birth so as to ensure continuity in service for a longer period of time.

The learned senior counsel for the University has further drawn the attention of this Court to the conduct of the petitioner and it is stated that after suspension, the Headquarter of the petitioner was fixed at Bihar Agriculture College, Sabour, where he joined on 5.09.2011, however, the petitioner absented himself from the Headquarter and on 19.09.2011, he sought extension of time by two weeks to reply to the regular departmental proceedings drawn against him. Hence, it is apparent that the petitioner was aware about the said departmental proceeding but nonetheless he did not take any step either to file show cause reply / reply to the charge sheet or to appear before the Conducting Officer in the on going departmental proceeding on various dates. It is further stated that the petitioner had deliberately chosen to proceed on medical leave without taking any permission in order to avoid being served with the show cause notice regarding the disciplinary action initiated against him despite several letters having been written to the petitioner herein to submit the original certificate of matriculation so that his date of birth could be verified (which are Annexure-11 series to the counter affidavit), nonetheless the petitioner failed to reply to any of such notice and despite directions by this Hon'ble Court, by an order dated 17.07.2011 passed in CWJC No. 15059 of 2010, the petitioner did not supply the matriculation certificate to the University. It is also submitted that when the show cause notices sent to the petitioner to submit his reply in the on going departmental proceedings proved to be ineffective, notice had to be issued in the daily newspaper, asking the petitioner to submit his explanation against the charges framed against him and only then the petitioner had submitted his reply. It is further submitted that upon verification of the office records of the college, it has transpired that no certificate whatsoever i.e. either the matriculation certificate or the intermediate certificate or the B.Sc. (Agriculture) certificate or the M.Sc. (Agriculture) certificate were ever deposited by the petitioner, hence the petitioner had made a false statement in the writ petition and is trying to harass the University authorities.

The learned senior counsel for the University has submitted that the petitioner has neither submitted the matriculation certificate, as directed by this Hon'ble Court in the earlier round of litigation nor school leaving certificate, as directed

by the learned Division Bench in L.P.A. No. 1546 of 2011 and in fact the petitioner has made a false statement in paragraph no. 37 of the writ petition, that the petitioner had submitted the S.L.C. vide letter dated 15.12.2011 inasmuch as no such letter has ever been received in the office of the University, as has been averred in paragraph no. 25 of the counter affidavit. It is submitted that the petitioner has failed to prove his innocence by either producing any documentary evidence in his defence or producing the original matriculation certificate before the Conducting Officer. It is submitted that sufficient opportunities were given to the petitioner to submit show cause reply against the charges levelled against him and to produce the original certificate of matriculation for verification as per the direction of this Court dated 17.05.2011 passed in CWJC No. 50509 of 2010, as upheld by the learned Division Bench but the petitioner on one pretext or the other has avoided to submit the original matriculation certificate which has in fact been tampered by him which amounts to serious misconduct involving mortal turpitude which is punishable under Rule 13.9(1), 13.9(i) & 13.9(2)(b)(iv) of the Rajendra Agriculture University Statutes. Lastly, it is submitted that the Vice-Chancellor is the competent authority to pass the order of termination qua the petitioner herein since he is the appointing authority of the petitioner herein as is apparent from clause 17.1 sub-clause 11 of the Rajendra Agriculture University Statutes.

I have heard the learned counsel for the parties as also the learned senior counsel appearing for the University and have perused the materials on record. This Court finds that noprocedural irregularity has been committed either by the disciplinary authority or by the Conducting Officer so as to warrant interference either with the enquiry report or the order of punishment dated 31.03.2012. It is apparent from the materials on record that adequate opportunity was granted to the petitioner and the principles of natural justice has been fully complied with. From the records it is apparent that the petitioner has defied and disobeyed the various orders of the authorities of the University, whereby and whereunder, he was directed to produce the original matriculation certificate as also was directed to participate in the on going departmental proceeding. Admittedly, this Court by an order dated 7.05.2011 passed in CWJC No. 15059 of 2011 and by an order dated 18.11.2011 passed in L.P.A. No. 1546 of 2011 had directed the petitioner to produce the matriculation certificate as well as school leaving certificate but the petitioner has failed to produce both the said certificates before the authorities, hence is guilty of gross misconduct and willful disobedience of the orders/instructions of the University authorities as well as of this Hon'ble Court. There is a prima facie case of interpolation with the records and in order to prove his innocence, the petitioner has not produced any proof to show that his date of birth is 25.12.1958, whereas on the contrary the University authorities, in their counter affidavit, have annexed documents wherein the petitioner has himself declared his date of birth to be 25.12.1952, hence this Court finds that the petitioner is guilty of misconduct involving moral turpitude. Though the respondent authorities have clearly denied in paragraph no. 25 of the counter

affidavit that any letter of the petitioner dated 15.12.2011 containing the S.L.C. was ever received in the office of the University, the petitioner has not filed any rejoinder to rebutt the same.

As regards the argument made by the learned counsel for the petitioner that the punishment of termination awarded to the petitioner is grossly disproportionate to the gravity of the charges levelled against him, the said argument is fit to be noticed for being rejected outrightly inasmuch as the petitioner herein, as discussed herein above, has committed grave misconduct as per clause 13.9(1) and 13.9(1)(i). Now coming to the last issue raised by the petitioner herein, i.e. the Board of Management is the appointing authority of the petitioner herein, hence the Vice Chancellor could not have passed the order of punishment of termination, the same is also required to be noted only for the purpose of being rejected inasmuch as clause 17.1 sub-clause 11 of the Statute clearly mentions that the appointing authority of Assistant Professor-cum-Junior Scientist is the Vice-Chancellor, hence this Court does not find any infirmity in the order of punishment of termination dated 31.03.2012 having been passed by the Vice-Chancellor.

Before parting, this Court would note that the conduct of the petitioner has been deplorable and he has left no stone unturned to harass the University authorities as is Writ large from the records of this case. For the reasons mentioned herein above, I do not find any merit in the present writ petition, accordingly, the same is dismissed.