

(1972) 08 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 711 of 1972

Ram Niwas Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-08-1972

Acts Referred:

Bihar High Schools (Control and Regulation of Administration) Act, 1960 — Section 4, 7, 8(2)

Citation : (1973) 6 PLJR 49

Hon'ble Judges : S. Akbar Husain, J;N.L. Untwalia, J

Bench : Division Bench

Advocate : J.C. Sinha, Jagdish Pandey and Vijai Bahadur Singh, for the Appellant; Prabha Shankar Mishra, Rajendra Prasad Singh and Vishwambhar Upadhyaya, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—Although the brief of this case is bulky, the facts may be stated in narrow campus as the point involved is a short one. The petitioner was the headmaster of T. K. Ghosh Academy, Patna. He was discharged from service by the Managing Committee of the school on the 23rd September, 1970. The petitioner preferred an appeal to the District Education Officer, Patna within 30 days of the receipt of the punishment order. After several hearings the Regional Deputy Director of Education, Patna, who heard the appeal, recorded his view in his order dated 5th February, 1972. According to the petitioner's case that view was in his favour. On receipt of the views of the Regional Deputy Director of Education, the President, Board of Secondary Education respondent No. 2 issued a notice dated 17th April, 1972 to the petitioner fixing 20th April, 1972 as the date for rehearing of the appeal. This was so done presumably because the President did not feel inclined to agree with the views of the Regional Deputy Director of Education. The petitioner rushed up to this Court to challenge the issuance of the notice by the President. Mr. J. C. Sinha, Learned Counsel for the petitioner submitted that on a correct interpretation of Rules 16 and 17 as were

engrafted in the Education Department's notification dated the 7th September, 1955 in the back-ground of the history of the Bihar Schools (Control and Regulation of Administration) Act, 1960 (Bihar Act XIII of 1960), hereinafter called the Act, it should be held that the President, Board of Secondary Education has no power to finally dispose of an appeal filed under Rule 16. It is the Board which has got that power and since the power has not been delegated to the President in accordance with Section 7 of the Act, the issuance of the impugned notice by the President is ultra vires and illegal. In my opinion there is no substance in this point. It must be rejected.

2. In view of the decision of the Supreme Court in (1) Dwarkanath Tewari & others V. State of Bihar and others AIR 1959 SC 249), the so called rules framed by the Education Department were not really rules framed under any statutory power but they were held to be mere administrative instructions. From time to time such instructions were issued. In this case as argued on behalf of the petitioner, we are concerned with two such notifications incorporating such instructions. The one is engrafted in the notification dated 17th September, 1959 and the other is the resolution of the Education Department of the Government of Bihar dated the 2nd April, 1957. The notification of 1955 as also resolution dated 2nd April, 1957 along with others were published under a notification dated 21st March, 1959 in the Bihar Gazette Extraordinary dated 23-3-1959. Then came the Act into force. Section 8 (2) of the Act reads as follows :

"(2) Until the Government makes rules under this Section the provisions contained in the Bihar Education Code 7th Edition as amended from time to time, and all resolutions and order of the State Government or of the Director of Public Instructions, Bihar, a collection of which was published in the extra-ordinary issue of the Bihar Gazette, of the 23rd March, 1959 and which are in force on the date of commencement of this Act, shall, in so far as they are not inconsistent with the provisions of this Act and the provisions of Constitution of India relating to schools established and administered by Anglo-Indian and minorities based on religion or language, be deemed to be the rules made under this Act for the purposes of this Act."

Thus, the rules or resolutions incorporated in the Bihar Gazette Extraordinary dated the 23rd March, 1959 became statutory rules u/s 8 (2) of the Act. The argument on behalf of the petitioner is that reading the relevant rules as not filed in September, 1955 with the relevant resolution dated 2-4-1957 it should be culled out that the Board of Secondary Education and not the President had the power to hear and dispose of a departmental appeal filed under Rule 16 of 1955 rules. If that be so, counsel for the petitioner further submitted that in absence of delegation of power by the Board to the President u/s 7 of the Act, the President has no power to rehear or dispose of the departmental appeal irrespective of the question whether the President agrees, or disagrees with the view of the delegated authority who had heard the appeal.

3. Rules 16 and 17 of the 1955 rules read as follows : "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 teachers has been discharged or dismissed. Appeal must be preferred to the District Education Officer within 30 days of the receipt of the punishment order. When an appeal has been preferred, the order of discharge or dismissal shall not be given effect to till the disposal of the appeal by the President, Board of Secondary Education."

"17. The appeal of the person concerned shall be heard by the President of the Board of Secondary Education or any member of the Board of Secondary Education duly nominated by the President or any officer ordinarily not below the rank of D. E. O. The appellant and the Secretary of the Managing Committee may be heard in person by the President, Board of Secondary Education or his nominee who may even authorise them to be represented by a representative."

Reading these two rules together it has been held by a Bench of this Court, of which I was a member, in (2) *Liladhar Jha and others V. Board of Secondary Education Patna and others* 1963 B. L. J. R. 880 that the President is under no obligation to give a rehearing to the appellant if he does not choose to differ from the views expressed by the delegated authority who had heard the appeal. The same Bench in, (3) *Ajit Kumar Mukherjee alias A. K. Mukherjee V. The President, Board of Secondary Education, Bihar, Patna and others* M. J. C. 899 of 1961 decided on the 14th August, 1964, has said at page 33 of the judgment--

"Rules 16 and 17 in regard to the manner of disposal of an appeal are not happily worded, but reading the two rules together it is legitimate and reasonable to hold that the appeal of the person concerned has to be heard and disposed of by the President of the Board of Secondary Education himself or the appeal, in the first instance, can be heard by any member of the Board duly nominated by the President) but, in that event, the final disposal and order in the appeal has to be passed by the President. If he agrees with the recommendation of the member hearing the appeal, he need not give any further hearing to the person concerned, but, if he disagrees with him, rules of natural justice would require the President to give either a further hearing to the person concerned or give an opportunity to him to explain such matter as may be necessary to be explained in regard to which the President may feel inclined to differ from the views expressed by the member hearing the appeal.....".

It would thus be noticed that what the President of the Board of Secondary Education has done in this case is exactly on the lines of the unreported decision of this Court referred to above. The argument put forward on behalf of the petitioner, however, is based upon Clause (iv) of Paragraph 8 of the resolution dated 2-4-1957. The said clause reads as follows :

"(iv) Constitution of Arbitration Board.--A set of rules was framed by Government in September, 1955, governing appointment and other service conditions of teachers in non-Government High Schools with a view to ensure effective

safeguard against any arbitrary action by the Managing Committee. It has been made obligatory on the Managing Committee to draw up regular proceedings before imposing any punishment on a teacher. A right of appeal against the order of discharge or dismissal has also been provided. The appeal is to be heard by the President of Board of Secondary Education or his nominee. For prompt disposal of appeal, it is proposed to lay down that appeal should be disposed of by the Board within two months as far as possible. Under the existing rules, it is open to the Managing Committee to enforce the order of discharge or dismissal, without waiting for the presentation of an appeal by the teacher against the decision of the Managing Committee and the decision of the Board of Secondary Education on the appeal. It is proposed to remedy this by a suitable amendment of the rules."

According to the said clause also "the appeal is to be heard by the President. Board of Secondary Education or his nominee". This is exactly on the lines of Rule 17 of the 1955 rules. And as a matter of necessary construction it has got to be held as has been held so many times that the final authority to hear or dispose of the appeal is the President. The delegated authority may hear the appeal but cannot finally dispose it of. In that background the meaning of the subsequent sentence in Clause (iv) "that appeal should be disposed of by the Board within two months as far as possible" must mean the disposal of the appeal by the President of the Board. It cannot mean the disposal of the appeal by the Board. If this interpretation were not to be given, Rules 16 and 17 will be contrary to Clause (iv) of the resolution dated the 2nd April, 1957. In Rule 16 it is provided that when an appeal has been preferred this order of discharge or dismissal shall not be given effect to till the disposal of the appeal by the President, Board of Secondary Education, while in Clause (iv) the wordings are that "under the existing rules, it is open to the Managing Committee to enforce the order of discharge or dismissal, without waiting for the presentation of an appeal by the teacher against the decision of the Managing Committee and the decision of the Board of Secondary Education on the appeal. It is proposed to remedy this by a suitable amendment of the rules". Now the rules do provide that the Managing Committee cannot enforce such order till the disposal of the appeal. I have, therefore, not the slightest hesitation in overruling the argument put forward by the petitioner on the basis of Clause (iv) of the resolution dated 2-4-1957 that under Rules 16 and 17 it should be held that it is the Board only who has the power to hear appeal and not President. That being so, the question of delegation of the power of the Board to the President u/s 7 of the Act does not arise. I may, however, add that functions of the Board have been enumerated u/s 4 of the Act. None of the Clauses (a) to (f) says that it is the function of the Board to dispose of the departmental appeals. Nor could it be stated at the bar that any such function has been prescribed under Clause (g) of Section 4 of the Act. It is, therefore, further clear that the power to dispose of the departmental appeal finally, one way or the other, vests in the President of the Board of Secondary Education and not in the Board. The only point urged in this writ

application having failed, the application also fails, which is accordingly dismissed. But there will be no order as to costs.

Akbar Hussain, J.

I agree.