
(2003) 03 PAT CK 0111
In the Patna High Court
Case No : C.W.J.C. No. 11910 of 2001

Safi Ahmad-II

APPELLANT

Vs

The Administrator, Bihar School Examination Board and
Others

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 PLJR 413

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Kamla Lal Srivastav, for the Appellant; Gyanendra Shukla, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the, order dated 31.7.2001 (Annexure-6) whereby the Petitioner has been visited with the penalty of compulsory retirement.

2. Short facts giving rise to the present application are that the Petitioner at the relevant time was working as Fares. By order dated 23.2.2001 (Annexure-1) he was put under suspension in contemplation of a departmental proceeding. Later on by memo dated 5.8.01 charges were leveled against the Petitioner and he was asked to submit his reply. Petitioner filed his reply denying all the charges. The inquiry officer submitted its report holding the Petitioner guilty of the charges. On receipt of the inquiry report the disciplinary authority by communication dated 21.7.2001 gave notice to the Petitioner against the proposed punishment of compulsory retirement and asked him to show cause within fifteen days. Petitioner filed his show cause and the disciplinary authority by the impugned order dated 31.7.2001 inflicted the punishment of compulsory retirement.

3. Mr. Gyanendra Shukla appearing on behalf of the Respondents raises a preliminary objection. He submits that Petitioner has remedy of appeal and in that view of the matter exercise of jurisdiction under Article 226 of the Constitution of India is not called for. Mr. Kamla Lal Shrivastava appearing on behalf of the Petitioner however, submits that this writ application was filed as back as on 10.9.2001 and the Respondents have already chosen to file the counter affidavit relegating the Petitioner to the remedy of appeal shall be wholly inequitable.

4. Having appreciated the rival submission, I do not find any substance in the submission of Shri Shukla. It is well settled that existence of an alternative remedy does not bar the jurisdiction of this Court and it is often said, it is a rule of discretion and not of jurisdiction. Here in the present case Petitioner had filed the writ application as back as on 10.9.2001 and the Respondents have filed the counter affidavit on merits also. In my opinion at such a distance of time, in the face of the Respondents filing counter affidavit and indicating their stand on the merits of the case, relegating of the Petitioner to the remedy of appeal shall be inequitable and on this ground I overrule the preliminary objection.

5. Mr. Shrivastava submits that the inquiry officer has conducted the inquiry behind his back and this itself renders the inquiry report vitiated in the eye of law. This according to Shri Shrivastava shall render the impugned order illegal. Mr. Shukla however, submits that Petitioner at no point of time demanded for the cross examination of the witnesses and for that the Petitioner has to blame himself. In reply Sri Shrivastava pointed out that the Petitioner was never informed about the date of inquiry hence the question of making any demand for cross examining the witness did not arise.

6. In paragraph 10 of the writ application Petitioner has clearly stated that the departmental inquiry was conducted behind his back and he could not take part in the inquiry. In the counter affidavit Respondents have nowhere averred that the inquiry officer intimated to the Petitioner, the date of inquiry and even thereafter Petitioner did not appear in the inquiry. In the absence thereof the assertion of the Petitioner that the inquiry was held behind his back without any notice to him has to be accepted. Once it is held so the report of the inquiry officer is rendered illegal on account of noncompliance of the principle of natural justice. The impugned order of the disciplinary authority being based on a report submitted not in conformity with the principle of natural justice, same cannot be allowed to stand.

7. Resultantly the report of the inquiry officer is quashed so also the impugned order of compulsory retirement. However, setting aside of the order of compulsory retirement and quashing of the report of the inquiry officer shall not preclude the Respondents from proceeding against the Petitioner from the stage later than the framing of the charge.

8. Application stands allowed with the liberty aforesaid. No. cost.