

**(2003) 01 JH CK 0070**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 243 of 2000**

Sarojini Kumari

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

---

**Date of Decision :** 15-01-2003

**Acts Referred:**

**Citation :** (2003) 1 JCR 606

**Hon'ble Judges :** Vikramaditya Prasad, J

**Bench :** Single Bench

**Advocate :** R. Krishna, Nidhi Jaiswal and Prasant Vidyarathi, for the Appellant;  
G.P. II and K.P. Choudhary, for the Respondent

---

## Judgement

Vikramaditya Prasad, J.—Heard all the parties. The petitioner has filed this writ for quashing her termination order.

2. The short question to be answered in this writ is whether because of noncompliance of the principle of natural justice this Court will interfere with the decision of the Managing Committee of a Minority School, by which the petitioner was terminated on the charges of unauthorized absence and for other charges.

3. The petitioner was a teacher in the school and she was proceeded departmentally for the charge as contained in Annexure-4. In the domestic enquiry an Advocate was appointed as the Enquiry Officer to conduct the enquiry against the petitioner. The petitioner prayed for appointment of an Advocate to defend her but this prayer was rejected by the contesting respondent i.e. Managements of the School on the ground that the petitioner has never filed any application before the Management for appointment of any advocate on her behalf to defend her case before the enquiry officer.

4. The learned counsel for the petitioner was contested the impugned order mainly on the ground of excessive punishment and the violation of the principle of natural justice. He has argued that for an unauthorized leave for such a period of 10 days and even though this charge is proved then also the punishment of

dismissal from service is disproportionate and excessive and according to him as she was not given the proper opportunity to defend her case, there was a gross violation of the principle of natural justice and on this score alone the fundamental right of the petitioner guaranteed under the Constitution is infringed and so, the writ is maintainable. In course of the argument the learned counsel for the petitioner also referred to certain submissions made by the respondent-State where the District Education officer, East Singhbhum, in her counter affidavit at paragraph 12 has stated that "the action taken by the Secretary is not legal as no proper processes were adopted by the Managing Committee for suspending the petitioner. The action is most mala fide and arbitrary on the part of the Secretary as he has not taken any prior approval from the Vidyalaya Seva Board, Patna, regarding the suspension of the petitioner". This was also the stand of the State. But it is the admitted fact that the approval after termination has been sought for and that approval has not been granted.

5. The learned counsel for the Management has seriously contested the writ on the grounds that the termination has been validly ordered because the charges leveled against the petitioners were serious as she had absented herself from the school on unauthorized leave and the petitioner never prayed for contesting her case through a defense counsel therefore, there has been no violation of the principle of natural justice. The second argument of the learned counsel for the respondent-Management was that there is law laid down by the Apex Court and by this Court, vide Annexure-D series, that the prior approval of the termination is not necessary and it can be taken after termination order has been passed by the Management. The learned counsel for the petitioner has very fairly conceded and does not rest his argument on this point.

6. The second question arises whether or not there is any body which can give prior sanction of the decision of the Managing Committee and here the matter became a question of law. Accordingly to the learned counsel for the respondents the Management referring to Section 66 of the Bihar Reorganization Act, 2000 and provisions of Section 10 (2) of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Ordinance, 1980, which came into effect in the year 1981 and argued that this body is a Corporate Body and in view of Section 66, of the Bihar Reorganization Act, 2000, even after creation of the Jharkhand State that body is functioning. Section 10(2) of the Act read as follows-

"The Board shall be a Corporate body having perpetual succession and common seal and shall sue and be sued by that name."

Section 66 of the Bihar Reorganization Act, 2000 (hereinafter referred to as the Act No. 30 of 2000) read as follows-

"66. General provision as to statutory Corporation.--(1) Save as otherwise expressly provided by the foregoing provisions of this part, where any body corporate constituted under a Central Act, State or Provisional Act for the

existing State of Bihar or any part thereof has, be virtue of the provisions of Part-II of this Act, became an inter State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate

(2) Any directions issued by the Central Government under Sub-section (1) in respect of any such body corporate shall include a direction to that any law by which the said body corporate is governed shall in its application to that body corporate, have effect subject to such exception and modification as may be specified in the direction".

The learned counsel for the State today filed a notification issued by the Joint Secretary, Human Resources Development, which says that for examination of the validity of the appointment of the teachers in the Non-Government Minority Secondary School, a Committee has been constituted. But this notification does not suffice our purpose because of its limited scope. Therefore, it is redundant for the purpose of this writ.

7. Now the learned counsel for the petitioner contended that the provisions of Section 66 of the Act No. 30 of 2000 will not be applicable in this case because in his opinion Schedule 9 gives exhaustive list of the Corporations which has been protected u/s 65 of the Act and since this Vidyalaya Seva Board is not mentioned in the Ninth Schedule of the Act No. 30 of 2000. This Vidyalaya Seva Board will not be treated to be a Corporation under the Act No. 30 of 2000. Schedule 9 is inconsonance with the provision of Section 65 of the Act No. 30 of 2000 and it does not inconsonance with the provision of Section 66 of the Act No. 30 of 2000.

8. Mr.P. Modi, the learned counsel for the State submitted that these laws have been adopted by the State of Jharkhand and until altered or repealed or amended that stand invoked in the State of Jharkhand.

9. The learned counsel for the petitioner then argued that if it is so that atleast the names of the Act would have been changed, but as it has not been done it indicates that this Act has not been adopted.

10. So far the question of approval from the Vidyalaya Seva Board is concerned, it is always expected that if there is a body constituted under a law to give approval then it goes without saying that it has to accord approval after examining the matter within the four corners of Law. The apprehension of the petitioner that the Vidyalaya Seva Board will simply give its seal of approval mechanically without examining the matter, in my opinion, is not well founded.

11. The argument that the principle of natural justice has been violated or the punishment has been excessive can also be considered by the Vidyalaya Seva Board and I hope and trust that it will be considered by the Board before giving

approval on the proposal of the Managing Committee. 12. Therefore, the Vidyalaya Seva Board is directed to dispose of the proposal sent by the Managing Committee after considering these two factors whether or not the petitioner has been deprived natural justice and whether the punishment of the petitioner has been excessive. In paragraph 3 of the counter affidavit of the respondent-Management it has been stated that the school has sent the entire matter to the Vidyalaya Seva Board vide letter dated 1.11.1999 and also to the concerned respondents for information in connection with the petitioner and Annexure-A Series annexed with the counter affidavit show that a letter has been sent to the Chairman of the Bihar Vidyalaya Seva Board on 1.11.1999.

13. The learned counsel for the petitioner again doubts the genuinity of the letter and the submissions in the counter affidavit of the Management respondents that the petition has been referred "to the Vidyalaya Seva Board. In face of the submission in the counter affidavit, at this stage I do not find any reason to make any comment, but if the learned counsel for the petitioner at any time hereinafter could show that actually this submission was false then it is made clear that the management -respondent shall be legally dealt with. The Vidyalaya Seva Board is directed to dispose of the letter of proposal of the Management within a period of two months from the date of this order by a speaking order on the aforesaid two points. It is made clear that the order passed by the Vidyalaya Seva Board will be binding upon both the parties.

14. With the above direction this writ is disposed of.