

(2003) 09 PAT CK 0014
In the Patna High Court
Case No : C.W.J.C. No. 14868 of 2001

Sidhnath Prasad

APPELLANT

Vs

The Administrator, Bihar School Examination Board and
Others

RESPONDENT

Date of Decision : 08-09-2003

Acts Referred:

Bihar School Examination Board Regulations, 1964 — Regulation 54(2), 54(3), 64

Citation : (2003) 4 PLJR 587

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Ratan Kumar, for the Appellant; J.P. Shukla, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 29th September, 2001 whereby the Petitioner has been visited with the penalty of compulsory retirement and also deprived of any other emoluments, other than the subsistence allowance already paid to him for the period of suspension.

2. Short facts giving rise to the present application are that the Petitioner at the relevant time was working as Section Officer in the Bihar School Examination Board, hereinafter referred to as "the Board. He was served with the memo of charge dated 4.6.2001. First charge related to his absence on 2.5.2001. It has been alleged that on the said date, when inquiry was made, it was found that the Petitioner had not reported for duty till 10.30 a.m. he submitted an application and absented from duty. Second charge pertained to non-supply of mark sheets and answer books on demand by the Examination Section and absence during the working hours. Petitioner submitted his reply dated 18.6.2001 (Annexure-9) praying for exonerating him from the charges. The enquiry officer considered the reply of the Petitioner and without holding any formal inquiry, submitted its

report dated 31.7.2001 (Annexure-15) holding the explanation submitted by the Petitioner in respect of charge No. 1 to be not satisfactory. However, the enquiry officer did not record any categorical finding in regard to charge No. 2. Petitioner was given second show cause notice dated 8.8.2001 (Annexure-13) stating therein that after he was not found present at 11.30 a.m. in the office, he came to know about that and thereafter gave application and absented from duty. Petitioner was asked to show cause within 15 days from the date of receipt of the said notice as to why he be not compulsorily retired from service. Petitioner did not file the reply and challenged the said notice in C.W.J.C. No. 11166 of 2001 Sidhnath Prasad v. The Administrator Bihar School Examination Board and Ors. before this Court. This Court, by order dated 31.8.2001, dismissed the writ application. Petitioner thereafter filed L.P.A. No. 1107 of 2001 Sidhnath Prasad v. The Administrator Bihar School Examination Board and Ors. before this Court. When the aforesaid appeal was taken up for consideration on 1.10.2001, it was pointed out that the final order has been passed by the Board and accordingly, the appeal was dismissed as infructuous.

3. As stated earlier, Petitioner did not file reply to the second show cause, notice and the disciplinary authority, on consideration of the report given by the enquiry Officer, inflicted the penalty of compulsory retirement and further directed that the Petitioner shall not be entitled for any other emoluments other than the subsistence allowance paid to him for the period of suspension. However, it was directed that's the period of suspension shall be treated as on duty for the purpose of grant of pension;

4. Dr. Ravi Ranjan, appearing on behalf of the Petitioner submits that the enquiry officer had submitted its report throwing all the rules and procedures to winds. He points out that the memorandum of charge only asked the Petitioner to submit the reply within 15 days failing which it was indicated that it shall be presumed that the Petitioner does not want to say anything in the matter and accordingly, decision shall be taken. Petitioner denied to have committed the misconduct and prayed for exoneration from charge. Thereafter, the enquiry officer, in fact, did not hold any inquiry, considered the reply of the Petitioner and found him guilty of one of the charges. While doing so, it had referred to the statements made by the employees of Darbhanga, Palamau and Saran Divisions before the Administrator of the Board in its review meeting held on 2.5.2001. The statements of such of the employees were not recorded during the course of inquiry.

5. It is common ground that the service conditions of the employees of the Board is governed by the Bihar School Examination Board Regulation, 1964, hereinafter referred to as "the Regulation". Chapter X part-C of the Regulation governed the disciplinary action against the employees of the Board. Regulation 64 thereof, inter alia, provides for framing of memorandum of charges, holding of oral enquiry and drafting of punishment order. Regulation 54(3) provides for the employee to put in a written statement of the defence within a reasonable time

to be specified in the memorandum of charge. The memorandum of charge is also required to indicate as to whether the delinquent employee deserves to be heard in person.

6. Regulation 54(2) of the Regulation provides for an oral inquiry in which oral evidence in regard to the allegations which are not admitted, is to be taken and the delinquent employee in turn is required to be given an opportunity to cross examine such witnesses.

7. In the present case, the enquiry officer had referred to the statements of the witnesses said to have been given before the Administrator during the review meeting before it on 2.5.2001. Thus, the enquiry officer has referred the material which was not before him according to the procedure laid down in law and that itself vitiates the enquiry report. Once it is held so, all the consequential orders become illegal.

8. Mr. J.P. Shukla, Senior Advocate appearing on behalf of the Respondents-Board prays for dismissal of this writ application on the ground that after the second show cause notice was given to the Petitioner, he did not choose to file any reply. I do not find any force in the submission of Mr. Shukla. As observed earlier, the enquiry officer had considered the material which was not placed before him during the course of inquiry. Further, no opportunity was given to the Petitioner to cross-examine those witnesses. Whether such pleas were raised or not in the reply to the second show cause notice is of no consequence when such illegality is pointed out before this Court, it goes to the very root of the matter, and cannot be ignored.

9. I have found the impugned order bad in law as the Enquiry Officer had submitted the report without following the procedure and in breach of the principle of natural justice, hence it shall not preclude the Respondents from proceeding in the matter from a stage subsequent to the framing of charges. As the Petitioner has otherwise also attained the age of superannuation, I deem it expedient that the Respondents in case intend to proceed against the Petitioner, final order be passed within six months from the date of receipt/communication of this order.

10. in the result, application is allowed, impugned order dated 29.9.2001 (Annexure-19) is quashed with the observation aforesaid. Consequential benefits shall abide by the said decision. No costs.