
(2006) 08 JH CK 0030
In the Jharkhand High Court

Smt. Annie Kujur (Ekka)

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 18(3)

Citation : (2006) 4 JCR 537

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Petitioner has filed this writ petition for quashing the order of her termination dated 1.3.1997 (Annexure-8) and for reinstating her with all consequential benefits and for a direction upon respondents No. 1 to 4 not to approve the order of termination.

2. Petitioner was an Assistant Teacher. A show cause notice dated 10.12.1996 was issued to her alleging that on 7.12.1996 and again on 8.12.1996 she behaved in a most obstinate manner, picked up quarrel with the principal and other teachers, used abusive language and disturbed the discipline of the school by stripping herself naked, which was a misconduct as per the rules of the School. A copy of the said notice was sent to the District Education Officer etc. Petitioner filed her show cause on 16.12.1996 (Annexure-2). The show cause was not found satisfactory and a departmental proceeding was initiated against her. She was asked to send the name of her representative, if any, and the list of witnesses. The Principal of neighbouring school was made the Enquiry Officer and on his request three respected persons from local public were kept as observers to the proceedings. Petitioner did not appear inspite of repeated notices. The enquiry committee found her guilty in it's report dated 28th January, 1997. On the same day she wrote a letter saying that she had already given her show cause on 16.12.1996. She further said that she did not think it proper to appear

before the Enquiry Committee and another Enquiry Committee of independent person may be constituted. A second show cause notice was issued along with a copy of the enquiry report asking her as to why she should not be dismissed from service. In reply, she reiterated her stand taken in the aforesaid letter dated 28.1.1997, that as the constitution of enquiry committee was bad, she did not think it proper to attend the proceedings. The managing committee took a decision on 28.2.1997, to dismiss her w.e.f. 1.3.1997 and accordingly a letter was sent to the Education department, and the School Service Board (Board for short) for approval of the dismissal. The said decision was communicated to her by letter dated 1.3.1997 (Annexure-8). Petitioner wrote a letter to the District Education Officer for superseding the Managing Committee and to consider her case before granting approval to the order of dismissal.

2. Mr. M.S. Anwar, learned senior counsel appearing for the petitioner, submitted that order of dismissal has to be set aside as it has not been approved as per Section 18(3) of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act 1981 (the Act for short); as no second show cause notice was issued to the petitioner; and as a charge of alleged forgery has been taken into account while passing the order of dismissal which was beyond the charges leveled against the petitioner.

3. In my opinion, such submissions cannot be accepted. Paragraph 14 of the judgment reported in All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, , 14 reads as follows:

Learned Counsel for the petitioner took serious objection to the provisions contained in Clause (d) of Section 18(3) which lays down that the managing committee of a minority institution shall have power to remove, terminate, dismiss or discharge a teacher with the approval of the School Service Board. It was urged that School Service Board has been imposed as a higher authority over the management; if the Board refused to grant approval to the disciplinary action taken by the management against a teacher, the management's right of administration would be affected adversely. The School Service Board enjoys blanket power on the management's right to take disciplinary action against its employees and therefore, Clause (d) infringes with the minority's right of management. We do not find any substance in the submissions. Indisputably power to remove, dismiss, terminate or discharge a teacher from service is an essential attribute of management's right but Clause (d) does not invest that power on any outside agency. The power to take disciplinary actions vests in the managing committee of the minority school. It is required to exercise that power in accordance with the rules framed by it. Clause (d) requires that the managing committee shall take approval of the School Service Board in removing, terminating dismissing or discharging a teacher from service. The managing committee is not required to obtain prior approval from the School Service Board after taking action. The School Service Board while considering the question of granting approval does not enjoy any unlimited power. It is required to consider

if the managing committee has taken the disciplinary action in accordance with the rules framed by the managing committee itself. If the Board finds that managing committee has taken action in accordance with rules the School Service Board has no option but to accord approval; but if the disciplinary action is taken contrary to the rules framed by the minority school itself the School Service Board will be justified in refusing to accord approval. The School Service is not invested with any veto or blanket power without any guidance, on the other hand it has limited power and guidelines are prescribed for the exercise of such powers. Such a provision is reasonable to ensure that rules framed by the minority school are followed and security of employment of teachers is maintained and there be no arbitrary exercise of power. Clause (d) of Section 18(3) expressly provides that while considering the question of granting approval to the disciplinary action taken by the management of a minority institution the School Service Board shall scrutinize whether disciplinary proceedings had been taken in accordance with the rules and no more. Regulatory provisions requiring approval of disciplinary action taken by the management of a minority institution have been upheld by this Court in a number of cases.

4. As already noticed above, a request for approval of dismissal order of the petitioner was sent to the Board for necessary orders on 28.2.1997. In spite of notice, the Board has chosen not to appear. Nothing has been brought on the record to show that the dismissal was not approved by the Board. The silence of the Board for about nine years cannot be taken as disapproval of dismissal of the petitioner. Rather, if the Board disapproved, it, such decision should have been communicated to the School, without any delay in such matter of dismissal. Moreover, as per the said judgment the Board was only enquired to consider whether the Managing Committee has taken disciplinary action in accordance with rules framed by the Managing Committee and if the Board found that action has been taken in accordance with rules it had no option but to accord approval. It may also be noted that in his counter affidavit, the District Education Officer has said that petitioner was dismissed after following all the procedures and norms and hence the order of dismissal is just legal and in accordance with rules. Thus taking these facts and circumstances in totality, it cannot be said that the order of dismissal is bad on account of non approval of the same by the Board.

5. Regarding second show cause notice, from the facts noticed in paragraph 2 hereinabove, it is clear that it was given to the petitioner to which she replied also.

6. It is true that a person cannot be punished without giving opportunity to defend against a charge. But in this case, after petitioner was found guilty of misconduct, commission of forgery by her during the disciplinary proceeding, was noticed additionally in the order of dismissal. It is not a case in which she was exonerated from other charges but was punished on the charge of forgery without giving her opportunity to defend herself on such charge. Even if such charge is ignored, the finding of misconduct cannot be disturbed. The scope of

judicial review under writ jurisdiction in such matters is limited. As noticed above, there has been no procedural error, and there is no perversity in the findings. Petitioner refused to take part in disciplinary proceedings on flimsy grounds. There has been no violation of principles of natural justice.

7. On the whole, I am not inclined to interfere with the decision of dismissal of the petitioner dated 28.2.1997. Accordingly, this writ petition is dismissed. However, there will be no order as to costs.