
(1980) 11 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 5141 of 1978

Smt. Lalita Kumari

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-11-1980

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1981) 29 BLJR 309

Hon'ble Judges : Sia Saran Sinha, J;B.P. Jha, J

Bench : Division Bench

Judgement

Sia Saran Sinha, J.—Smt. Lalita Kumari has prayed, inter alia, for quashing Annexures 5 and 15 to the writ application filed under Articles 226 and 227 of the Constitution of India.

2. The facts of the case lie in a narrow compass and the point for decision is a simple one. After passing the middle school examination as a private candidate, the petitioner applied for the post of a teacher in a Government lower primary school, the minimum qualification required for the post, undisputedly, being middle school examination certificate. She was appointed to the post by the District Superintendent of Education, Patna, and she joined the post as a teacher in the lower primary school at Dubharah on 19-3-1959. She worked as a Primary School Teacher for a considerable long period till the year 1976, when by Annexure 5 which is dated 18-6-1976, a suspicion having arisen about her passing the Middle School Examination, she was noticed to appear in the office of the District Education Officer, Patna, on the date specified therein viz to produce her original School leaving Certificate. The further orders as contained in Annexure-5 was that till the final decision about the genuineness of her certificate she will not be allowed to withdraw her salary. It appears that the department enquired into the matter and the authority concerned was satisfied that in fact she had not passed the Middle School Examination and the certificate produced by her was a forged one. Emboldened by this enquiry the

department launched upon a departmental proceeding against her, Annexure-3 being the charge that was served on her which substantially stated that the Middle School Examination certificate " produced by her was found to be forged one. An enquiry proceeded and according to the department she did not take part in the same. The result was that the department came out with the order as contained in Annexure-15. It stated that since the Middle School certificate produced by her, which was the basis of her appointment as a teacher was found to be forged, her appointment was cancelled with retrospective effect from the date of her appointment itself. A further order was passed for realisation of all the salary which she had withdrawn from the Government Treasury since the time of her appointment, Annexure-15 is dated 18th July, 1978. It is in these circumstances that the petitioner has approached this Court. The respondents have contested her claim by filing counter affidavit. The sole point for consideration is whether the orders as contained in Annexure-15 is legal and valid.

3. The petitioner was appointed as far back as in the year 1959. Her appointment was cancelled on the 18th of July, 1978. The order as contained in Annexure-15, however, cancelled her appointment retrospectively from the date of her appointment itself with the further orders for recovery of the entire amount of salary drawn by her from the date of her appointment till the cancellation of her appointment. Retrospective termination of service or cancellation of the appointment, as the case may be, is totally unjustifiable and similar is the position with regard to recovery of the salary drawn for the period she worked as a teacher, Conscious of this legal position, the learned Additional Advocate General representing the respondents frankly conceded that this part of the order could not be supported. The result is that the cancellation of her appointment from the date of her appointment and orders for recovery of the salary drawn by her during the period she actually worked as a teacher is held to be unsustainable in law and is bound to be quashed.

4. The learned Additional Advocate General, however, argued that the cancellation of her appointment or the termination or her removal from service with effect from the 18th July, 1978, was justified, on the facts and in the circumstances of this case. Learned Counsel for the petitioner seriously refuted this contention.

5. It is well settled by now that a departmental proceeding is a quasi judicial proceeding and the position of a delinquent staff proceeded against is akin to that of the accused in a criminal trial. This necessitates not only the observance of the statutory formalities but of the rules of natural justice, and if there is infraction of either of the two in appropriate circumstances it will prove fatal to the final order passed against the delinquent staff.

6. Undisputedly being a Government servant the petitioner is governed by the Bihar Service Rules, Rule 55 whereof lays down the procedure to be followed in a departmental proceeding. It states, inter alia, that the grounds on which it is

proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with the statements of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing the orders in the case. The charge as contained in Annexure-13 stated that on enquiry the Middle School Examination certificate produced by her was found to be a forged one. The enquiry report was not, however, enclosed with Annexure-13 and the learned Counsel for the petitioner raised a serious grievance on this count. In the memo portion of the charge the Government servant proceeded against is invariably informed that he should file his show cause, if any, and should indicate his intention if he wants to be heard either in person or through a lawyer and should be present at the time when the enquiry commences. Annexure-13 is silent in this respect. It simply states that she should file her show cause before the enquiring officer named therein. According to the respondents the enquiry proceeded and the petitioner defaulted to appear before the enquiring officer. The learned Additional Advocate General who was in possession of the records of the departmental enquiry could not, however, point out whether the evidence of the witnesses who were said to have been examined on behalf of the department in support of the charge was at all recorded by the enquiring officer. The recording of such evidence is necessary particularly in a case where an appeal is provided against the order to be passed in the departmental proceeding.

7. The position of a delinquent staff being akin to that of an accused in the criminal trial it is incumbent on the department concerned to allow an opportunity to the delinquent officer or staff to adduce evidence after the examination of prosecution witnesses are over. If no such opportunity is allowed it will clearly be an infraction of the rules of natural justice causing serious prejudice to the delinquent staff. No such opportunity was provided to the petitioner. The learned Additional Advocate General contended that as the petitioner did not appear before the enquiring officer at the earlier stage it was not considered necessary to allow her such an opportunity. In the fact and circumstances of this case this contention must be rejected outright. A departmental proceeding consists of several stages and every stage has significance of its own. As pointed out above Annexure-13 did not direct the petitioner to state if she had to say anything or she desired to be heard either in person or through a pleader. In such a situation even assuming that the petitioner did not appear at one stage of the departmental enquiry, a contention which was refuted strongly by the learned Counsel for the petitioner the rules of natural justice demanded that a clear opportunity should have been provided to the petitioner to adduce evidence by way of defence if she desired. In the facts and circumstances of this case the denial of such an opportunity to the petitioner was an action in utter violation in the rules of natural justice introducing serious infirmity in the impugned order and rendering it illegal.

8. The result is that the application is partly allowed and Annexure-15 is

quashed. The charge levelled against the petitioner is of a serious nature and as such it is not considered necessary or desirable to quash Annexure-5. The department will be at liberty to proceed against the petitioner afresh in accordance with law and pass appropriate orders. The quashing of Annexure-15 will have the inevitable consequences of reinstatement with full back wages in accordance with law. In the circumstances of this case there will be no order as to costs and the parties shall bear their own costs.