

(1973) 09 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 727 of 1968

Sri Jagdish Prasad Singh

APPELLANT

Vs

The President, Board of Secondary Education and Another

RESPONDENT

Date of Decision : 19-09-1973

Acts Referred:

Citation : (1974) PLJR 286

Hon'ble Judges : N.L. Untwalia, C.J;S.N.P. Singh, J;S.K. Jha, J

Bench : Full Bench

Advocate : J.N.P. Verma and Ramesh Chandra Sinha, for the Appellant; Birendra Mohan Singh, for the Respondent

Judgement

S.N.P. Singh, J.—The petitioner, Sri Jagdish Prasad Singh, who is the Secretary of the Managing Committee of Khajuraj High English School in the district of Patna, has filed this writ application under Article 226 of the Constitution for grant of a writ in the nature of certiorari to call upon and quash the order dated the 10th of August, 1968, passed by the President, Board of Secondary Education, Bihar (hereinafter to be called "the President of the Board"), a copy whereof has been made Annexure "2" to the writ application. The impugned order was passed by the President of the Board in the following circumstances. Sri Tarkeshwar Nath Singh (respondent no. 2) was appointed as the Head Master of the School on temporary basis in the year 1959 and he joined the post on the 10th of November, 1959. He was put under suspension with effect from the 4th of January, 1967. Certain charges were served upon him along with the suspension order. Ultimately by the purported resolution of the Managing Committee dated the 29th of January, 1967, he was discharged from service with effect from the 30th of January, 1967. Being aggrieved by the order of the Managing Committee, respondent no. 2 filed an appeal before the President of the Board under Clause 16 of the Rules for Appointment, Departmental Approval, Discharge, Dismissal and Appeal of teachers of non-Government Secondary Schools (hereinafter to be called "the Rules"). The President of the Board by the impugned order set aside

the resolution of the Managing Committee of the school discharging respondent no. 2 from the service of the School and directed his reinstatement.

2. When this case was placed for hearing before a Division Bench of this Court, it was urged on behalf of the petitioner that respondent no. 2 being a temporary Head Master had no right of appeal to the President of the Board against the decision of the Managing Committee. Reliance was placed in support of the above contention on the decision of a Bench of this Court in (i) Kabutra Kuer V. Board of Secondary Education and others (1963 B.L.J.R. 858). In that case the services of the Head Master of a school during the period of his probation had been terminated by the Managing Committee of the School. It was held in that case that the Head Master who was on probation on the date the Managing Committee made the order of termination of his service had no right of appeal to the President of the Board under Clauses 16 and 17 of the Rules and the President of the Board had no jurisdiction to hear the appeal. In that case also charges had been drawn up against the Head Master with regard to his unsatisfactory conduct.

Before the Division Bench learned counsel appearing on behalf of respondent no. 2 placed reliance on an unreported Bench decision of this court in (2) Shri Gandhari Singh V. The Managing Committee of Shri Durga Uchcha Vidyalaya, Naya Bazar, Lakhisarai and others (M.J.C. No. 1096 of 1964 dated the 1st of April, 1965) and another Bench decision of this Court in (3) Kailash Choudhary V. President, Board of Secondary Education, Bihar, Patna (1970 B.L.J.R. 341) in support of the proposition that if a temporary teacher has been dismissed or discharged from service on one of the grounds mentioned in Clause 15 of the Rules, he has a right of appeal. It appears that in (2) Gandhari Singh's case (M.J.C. No. 1096 of 1964 the Head Master, who had not been confirmed, was discharged from service. He preferred an appeal against the order of discharge to the President of the Board but the latter refused to entertain the appeal on the ground that the appeal was not maintainable under Clauses 16 and 17 of the Rules as the Head Master was not a confirmed teacher. In that case it was contended on behalf of the petitioner Head Master that the order of discharge was passed under Clause 15 of the Rules and as such he was entitled to prefer an appeal to the President of the Board under Clause 16 of the Rules. It was conceded by the then Standing Counsel appearing for the State that there was no rule limiting the right of appeal of a teacher discharged under Clause 15 to a confirmed teacher only. It was accordingly held in that case that the order of the President of the Board holding that the appeal of the petitioner was not maintainable under Clauses 16 and 17 of the Rules was bad in law. (1) Kabutra Kuer's case was not brought to the notice of their Lordships who heard that case. In (3) Kailash Choudhary's case an assistant teacher of the school working on a temporary basis had been discharged from service by the Managing Committee on the ground of certain misconduct Being aggrieved by the order of the Managing Committee, he preferred an appeal to the President of the Board. The President of the Board passed order for reinstatement of the teacher to the post of assistant teacher which he was holding. One of the points for

consideration in that case was whether a temporary teacher who had been discharged from service could prefer an appeal to the President of the Board. The Bench of this Court which heard the appeal held that if the appointment of a temporary teacher is terminated under Clause 15 which relates to moral turpitude or gross negligence of duty or behaviour likely to prove subversive of discipline or any other good or sufficient reasons which may not make his retention on the school-staff any longer desirable, then and then only an appeal may lie to the President of the Board even if the teacher happens to be merely a temporary teacher. Where, however, the termination of a temporary teacher is on the ground that the school Managing Committee does not require the services of a particular temporary teacher any longer then Clause 15 of the Rules is not attracted.

3. As there is a direct conflict between the two Bench decisions, one in (1) *Kabutra Kuer's* case (1963 B.L.J.R. 858) and the other in (3) *Kailash Choudhary's* case (1970 B.L.J.R. 341), the instant case has been referred to a larger Bench for a decision of the question whether a temporary teacher, whose service has been terminated on any of the grounds mentioned in Clause 15 of the Rules, has a right of appeal to the President of the Board under Clause 16 of the Rules.

4. Clauses 12 to 17 of the Rules are relevant for our purpose and they may be quoted in extenso;

12. The Managing Committee may impose the following punishment on any member of the staff including.....those on probation after having finally considered his explanation and the charges levelled against him in writing:--

(i) Warning, (ii) Censure, (iii) Withholding of normal increments, (iv) Discharge, (v) Dismissal.

Note:-(1). Proceedings are to be started against teachers concerned by the Secretary on the report of the Head Master or by the President, on the report of the Secretary, or by the President himself, or by the Managing Committee as a whole. Ordinarily the Managing Committee as a whole has the power to suspend the teacher but in cases of urgency, the Secretary in consultation with the President may suspend a teacher but this must be approved by the Managing Committee within a fortnight. Charges must be handed to the teacher in writing within two days of the suspension order. The teacher concerned must submit his explanation within seven days of the receipt of the charges. A meeting of the Managing Committee shall be convened within a fortnight from the date of suspension order for which a clear seven days' notice shall be given to every member. Such meetings should have a quorum of two-third of the total number of members (that is, eight members). If the teacher member or the Head Master himself is involved, he shall not attend the meeting. Orders of discharge or dismissal shall be valid only if they have been passed by the Managing Committee. In no case, however, shall a teacher be kept, under suspension for a

period exceeding 30 days or in case he has filed an appeal up to two months or till the disposal of his appeal.

(2). During the period of suspension the teacher shall be allowed to draw half his salary plus dearness allowance and upon exoneration, the balance shall be paid to him.

13. No order under Rule 12 except that for warning or censure shall be passed unless (i) regular charges have been framed against the teacher and communicated to him with a statement of grounds on which it is proposed to take action, (ii) he has been given adequate opportunity (a) of submitting a written statement of his defence within a fort night of the receipt of the order, (b) of being heard in person, if he so desires, and (c) of calling and cross-examining such witness in his defence as he may desire, provided that the Officer or the Committee conducting the enquiry, may for sufficient reasons to be recorded in writing reject the petitioner's prayer to call a witness.

14. The termination of service of a person--

(i) during the period of probation,

(ii) during the period in which he holds a temporary appointment,

(iii) on retrenchment of a post, will not amount to discharge or dismissal. In such cases, however, the teacher or Head Master shall be apprised of the grounds on which it is proposed to terminate his services and his reply considered by the Managing Committee before orders are passed.

15. A teacher shall not be discharged or dismissed save and except on ground of proved inefficiency, conduct involving moral turpitude or gross negligence of duty or behaviour likely to prove subversive of discipline, or any other good or sufficient reasons which may make his retention on the school staff no longer desirable. In the last case, the prior approval of the Department is necessary.

16. The decision of the Managing Committee under Clause 15 shall be immediately communicated to the person concerned in writing. The person concerned shall have the right to appeal through the proper channel in respect of orders in which the teacher has been discharged or dismissed. Appeal must be preferred to the District Education Officer within thirty days of the receipt of the punishment order. When an appeal has been preferred, the order of discharge or dismissal shall not be given effect to till the disposal of the appeal by the President, Board of Secondary Education.

17. The appeal of the person concerned shall be heard by the President of the Board of Secondary Education or any member of the Board of Secondary Education duly nominated by the President or any Officer ordinarily not below the rank of D.E.O. The appellant and the Secretary of the Managing Committee may be heard in person by the President, Board of Secondary Education or his nominee who may even authorise them to be represented by a representative.

5. On a plain reading of Clause 12 of the Rules it is clear that it applies even to a member of the staff who is on probation. The procedure prescribed under Clause 13 must, therefore, be followed before an order of discharge or dismissal can be passed against any member of the staff of the school including those who are working on probation. Clause 15 of the Rules specifies the grounds on which a teacher can be discharged or dismissed. There is nothing in Clause 15 to restrict its application only to confirmed teachers. It is, therefore, plain that a temporary teacher can be discharged or dismissed only on any of the grounds specified in Clause 15. Before an order of discharge or dismissal can be passed against such a teacher, the procedure prescribed under Clause 13 has to be followed. The expression "the termination of service" occurring in Clause 14 has been used in quite a different sense than that in which the expression "discharge or dismissal" occurring in Clauses 12 and 15 of the Rules has been used. It has been used in the sense of termination simpliciter, that is, termination of service not by way of punishment. The expression "discharge or dismissal" in Clauses 12 and 15 has been used in the sense of termination of service by way of punishment for misconduct.

6. On a consideration of the different clauses, therefore, I am of the view that when the termination of service of a teacher, who holds a temporary appointment or who is working on probation, is not by way of punishment only then the provisions of Clause 14 will be attracted. If the termination of service of such a teacher is, however, on any of the grounds mentioned in Clause 15 of the Rules, such a termination will amount to an order of discharge or dismissal and in such a case the provisions of Clause 14 will not apply. I am further of the view that in such a case a temporary teacher or a teacher working on probation will have a right of appeal to the President of the Board against the decision of the Managing Committee passed under Clause 15 of the Rules. I would make it clear that the use of the actual words in the order or resolution of the Managing Committee will not be decisive of the question whether the termination of service of a temporary teacher or a teacher working on probation is a termination of service simpliciter or a termination of service by way of punishment. Even if the words "termination of service" are used in the order or resolution of the Managing Committee, but at the same time the order or the resolution shows that the service of a temporary teacher or a teacher working on probation has been terminated on any of the grounds of misconduct mentioned in Clause 15 of these Rules, such a termination of service will amount to dismissal or discharge and the provisions of Clause 14 will have no application. In such a case the aggrieved teacher will have a right of appeal to the President of the Board under Clause 16 of the Rules. It appears that in (1) Kabutra Kuer's case the attention of their Lordships, who constituted the Bench, was not drawn to the provisions of Clause 12 of the Rules which apply to all members of the staff including those on probation. Because of that it was held in that case that the Head Master, whose services were terminated during the period of probation for unsatisfactory conduct, had no right of appeal to the President of the Board. In my opinion, the

view taken in (3) Kailash Choudhary's case appears to be the correct view. I accordingly hold that if the service of a temporary teacher or a teacher working on probation is terminated on any ground of misconduct mentioned in Clause 15 of the Rules, such a teacher will have a right of appeal to the President of the Board under Clause 16 of the Rules.

7. I will now refer to three unreported decisions of this Court which were brought to our notice during the hearing of this writ application. In (4) Ajit Kumar Mukherjee V. The President, Board of Secondary Education, Bihar, Patna, and others (M.J.C. No. 899 of 1961 disposed of on the 14th of August, 1964) it was held on facts that the service of the petitioner of that case, who was a teacher on probation, was terminated within the meaning of Clause 14 and no punishment was meted out to him within the meaning of Clause 12 of the Rules. He had, therefore, no right of appeal under Clause 16 of the Rules. That case was decided by the same learned Judges who had decided (1) Kabutra Kuer's case. As the attention of their Lordships was drawn to the provisions contained in Clause 12 of the Rules they accepted the principle that a teacher on probation will have a right of appeal under Clause 16 of the Rules service if terminated by way of punishment.

8. The case of (5) Virendra Kumar Sharma V. Sada Nand Chakravarty and others (M.J.C. No. 807 of 1961 disposed of on the 16th of August, 1965) had been referred to a larger Bench to resolve the conflict between the decisions in (1) Kabutra Kuer's case and Gandhari Singh's case. Before the Full Bench, however, it was contended on behalf of the petitioner of that case that he was not given an opportunity by the appellate authority to show that he was confirmed Head Master and not a temporary incumbent. It was conceded in that case that if the petitioner failed to show that he was a confirmed Head Master he would have no right of appeal because no order of dismissal or discharge had been passed against him within the meaning of Clause 15 of the Rules. Their Lordships, who constituted the Full Bench, accepted the contention raised on behalf of the petitioner and without resolving the conflict in the two Bench decisions remanded the case to the appellate authority to decide the question whether prior to the termination of his service the petitioner was a permanent Head Master or a temporary Head Master.

9. In (6) Uma Shankar Prasad V. The President, Board of Secondary Education and others and Ram Nandan Singh V. The President, Board of Secondary Education and others (C.W.J.C. Nos. 398 and 444 of 1965, respectively, which were heard together by a Bench of this Court and disposed of on the 14th of September, 1965) it was held that even unconfirmed Head Masters and school teachers are entitled to appeal against the order of discharge if it could be shown that the order was passed by way of punishment. Reliance was placed on the decisions in Ajit Kumar Mukherjee's case and Gandhari Singh's case. If I may say so with respect, the view taken in those two cases is the correct view.

10. In the instant case it was not disputed before us that the service of

respondent no. 2 was terminated by the Managing Committee on certain grounds of misconduct. A copy of the purported resolution of the Managing Committee dated the 29th of January, 1967, by which the service of respondent no. 2 was terminated, has been made Annexure "4" to the reply to the counter-affidavit filed by the respondents. Annexure "4", on the face of it, shows that the service of respondent no. 2 was terminated by way of punishment for his misconduct in acting against the interest of the school. The termination of service of respondent no. 2, therefore, amounted to his discharge from service within the meaning of Clauses 12 and 15 of the Rules and it was not a case of termination of service of respondent no. 2 simpliciter. Respondent no. 2, therefore, had a right to appeal to the President of the Board under Clause 16 of the Rules.

11. Having decided the main question, which fell for consideration in the instant case, I proceed now to consider another contention which was raised by Mr. J.N.P. Verma, learned counsel appearing for the petitioner. It was submitted that there are errors of law apparent on the face of the order of the President of the Board (Annexure 2) and as such it should be quashed. There is absolutely no merit in this contention. It appears from the impugned order (Annexure 2) that the President of the Board heard both the parties and considered the various points taken in appeal by respondent no. 2 and the objections raised on behalf of the Managing Committee. The President of the Board ultimately recorded the findings that in discharging Sri Tarkeshwar Nath Singh (respondent no. 2) from service the Managing Committee did not follow the prescribed rules; that the charges were vague; that the basis on which the charges were framed was not made known to respondent no. 2 and that there was violation of the principles of natural justice. The President of the Board further held that the meetings in which the order of suspension of respondent no. 2 and the order of his discharge from service were passed by the Managing Committee were illegal. Mr. Verma though raised the contention that there are errors of law apparent on the face of the order of the President of the Board could not satisfy us that the President of the Board had committed any error of law. On the contrary, some of the documents filed by the petitioner themselves show that the President of the Board was justified in allowing the appeal of respondent no. 2.

12. As already stated, respondent no. 2 was suspended from service with effect from the 4th of January, 1967. A copy of the letter dated the 4th of January, 1967, from the Secretary of the school to respondent no. 2 has been made Annexure "4" to the reply to the counter-affidavit filed on behalf of the respondent no. 2. By Annexure "4" respondent no. 2 was informed that he had been suspended from service with effect from the 4th of January, 1967. He was further informed that apart from the charges contained in the letter dated the 15th of November, 1966, there were certain other charges against him for which he had been suspended. In Annexure "4" six charges were specified against respondent no. 2. A plain reading of Annexure "4" shows that the first four charges were vague. They were (1) dereliction of duty, (2) forgery in the attendance register of teachers, (3) indiscipline and disobedience of orders, and

(4) constant attempt to disturb peace. No particulars were given in respect of those charges. Even the fifth and the sixth charges were not very definite. In the previous letter dated the 15th of November, 1966, a copy whereof has been made Annexure "3" to the reply to the counter-affidavit filed on behalf of respondent no. 2 the allegation was that respondent no. 2 was in the habit of leaving the school to look after his cases as a result of which the work of the school used to suffer. It was stated in the letter that respondent no. 2 had left the school on 10.10.1966, 11.10.1966, 31.10.1966 and 10.11.1966 without authorising any one as the acting Head Master. As stated in paragraph 5 of the counter-affidavit filed on behalf of respondent no. 2, the charges mentioned in the letter dated the 4th of January, 1967, were received by him on the 9th of January, 1967. The above statement has not been denied by the petitioner in reply to the counter-affidavit filed by respondent no. 2. According to Note (1) of Clause 12 of the Rules, the charges have to be handed to the teacher concerned in writing within two days of the suspension order and the teacher concerned has to submit his explanation within seven days of the receipt of the charges. When the charges were served on respondent no. 2 on the 9th of January, 1967, he was entitled to file his explanation up to the 16th of January, 1967. It appears, however, that the Managing Committee held a meeting on the 15th of January, 1967, and passed an ex parte order holding that the various charges were proved against respondent no. 2. The said resolution of the Managing Committee has been made Annexure "3" to the reply to the counter-affidavit filed on behalf of the respondents. On the basis of that resolution a letter was sent by the secretary of the school to respondent no. 2 on the 15th of January, 1967, a copy whereof has been made Annexure "5" to the reply to the counter-affidavit filed by respondent no. 2. By that letter respondent no. 2 was asked to show cause as to why he should not be discharged from service within seven days, on the ground that as per resolution no. 4 of the Managing Committee dated 15.1.1967, the charges levelled against him were proved to be true. In the writ application it has been stated that specific charges in detail were drawn up by the Managing Committee in its meeting dated the 15th of January, 1967, against the Head Master and the same were duly communicated to him but the Head Master refused to take the letter although he went through the contents of the said letter. It has been further stated that the said letter was, therefore, sent to him under registered cover which was also refused by him. The above statements have been denied by respondent no. 2 in his counter-affidavit. Annexure "3" and Annexure "5" referred to above clearly show that in the meeting of the 15th of January, 1967, the Managing Committee came to the finding that the charges levelled against the Head Master were proved to be true and on the basis of that finding the Secretary of the school issued the letter to respondent no. 2 to show cause as to why he should not be discharged from service. The statement made in the writ application that on the 15th of January, 1967, specific charges in detail were drawn up by the Managing Committee against the Head Master, therefore, is nothing but a tissue of lie. It is manifest from the documents which have been filed by the petitioner himself that the charges which were served on

respondent no. 2, were vague, that there were violations of the provisions of Clauses 12 and 13 of the Rules and that respondent no. 2 was not given adequate opportunity of submitting a written statement of his defence or of being heard in person in accordance with the Rules. The President of the Board, therefore, was justified in allowing the appeal filed by respondent no. 2. In my opinion, no valid ground has been made out for interfering with the order of the President of the Board. In the result, this application is dismissed, but in the circumstances of the case, there will be no order for costs.

Untwalia, C.J.

I entirely agree. I think (1) Kabutra Kuer's case (1963 B.L.J.R. 858) was wrongly decided. Shortly after the decision of that case, the discussion made with reference to Clause 12 of the Rules in my judgment in (4) Ajit Kumar Mukherjee V. The President, Board of Secondary Education, Bihar, Patna and others (M.J.C. No. 899 of 1961, disposed of on the 14th August, 1964) would show that had the facts of that case would have shown that it was a case of dismissal or discharge of a temporary teacher by way of punishment, I would have probably taken the same view as the one taken by a Bench of this Court in (3) Kailash Choudhary's case (1970 B.L.J.R. 341) which has been approved by my learned Brother.

S.K. Jha, J.

I fully agree with the judgment of my learned, Brother S.N.P. Singh, J.