
(1993) 01 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 7420 of 1991

Sri Ramroop Tanti

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-1993

Acts Referred:

Citation : (1993) 01 PAT CK 0004

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 15-5-1989 issued by the respondent No. 2 whereby the services of the petitioner had been terminated and a direction has been issued for recovery of total salary drawn by him.

2. The fact of the case lies in a very narrow compass. The petitioner passed secondary school examination in the year 1968. He allegedly passed his teacher's training examination in the year 1970. The marks-sheet issued to the petitioner allegedly by the Bihar School Examination Board in the teacher's training examination is contained in Annexure-1/A to the writ application.

According to the petitioner, an advertisement was issued for appointment in the post of teacher pursuant whereof he filed an application and by an order dated 10-12-1981 he and 13 other persons were appointed on the post of Matric trained Assistant teachers on temporary basis. The said order dated 10-12-1981 is contained in Annexure-2 to the writ application. The petitioner stated that he has drawn his salary from January, 1982 to November, 1985. Thereafter payment of his salary was stopped on the ground that he has filed a false teacher's training certificate. According to the petitioner, an inquiry was made and the said certificate was found to be a genuine one. Thereafter by an order dated 2-6-1986 the earlier order dated 14-10-1985 was revoked and the petitioner was directed to be paid his salary pursuant whereof he joined again on 2-6-1986. The petitioner has alleged that payment of his salary was again stopped from July, 1988 to May, 1989. The petitioner filed a representation. By reason of an order

dated 15th of May, 1989 as contained in Annexure 7 to the writ application, the salary payable to the petitioner was directed to be stopped and he was directed to be removed from services.

3. The petitioner has contended that prior to issuance of the said order neither any show-cause notice was issued to the petitioner nor he was given an opportunity of hearing. A criminal case had also been instituted against the petitioner.

4. In this case a counter-affidavit has been filed wherein it has inter alia, been contended that an inquiry was made and in the said inquiry, it has been found that the training certificate filed by the petitioner was a forged one. The said inquiry report is contained in Annexure A to the counter-affidavit. It has been contended that the petitioner was appointed on a forged training certificate and thus he was not entitled to any salary. It has further been contended that in the first inquiry the petitioner influenced the enquiring officer and managed to obtain a clear remarks from him but when a detailed inquiry was made, the training certificate submitted by him was found to be a forged one. It has further been submitted that it is not correct that no show-cause notice was served upon him. By a letter dated 16-3-1989 as contained in Annexure B to the counter-affidavit, the petitioner was asked to produce his original certificate but he did not do so and thereafter a criminal case was instituted against him, a copy whereof is contained in Annexure C to the counter-affidavit.

5. The petitioner has filed a reply to the said counter-affidavit wherein it has been inter alia contended that as the petitioner was exonerated in the earlier inquiry ; the impugned order as contained in Annexure 7 to the writ application is barred under the principle of res judicata. With regard to the inquiry report which is contained in Annexure A to the counter-affidavit, it has been submitted that the same has been obtained behind the back of the petitioner wherefor he had not been given any information. It has also been contended that the District Magistrate has no power to terminate his services.

6. As, the matter related to the alleged grant of a training certificate by Bihar School Examination Board, by an order dated 3-11-1992, the Bihar School Examination Board was permitted to be added as respondent No. 4 in this writ application. On that date Mr. Krishna Mohan, learned Counsel appearing on behalf of the petitioner handed over a copy of the duplicate certificate to Mr. Parbat appearing on behalf of respondent No. 4. By reason of the said order Mr. Parbat was directed to see as to whether the duplicate certificate granted to the petitioner is genuine or not.

7. At the hearing of this application Mr. Y. V. Giri, learned Counsel appearing on behalf of the respondent No. 4 produced before us the original tabulation register and submitted that the petitioner's name does not appear therein. Mr. Giri submitted that from the tabulation register, it would appear that in the relevant year there was no examination centre at Munger. It has been submitted that only

116 candidates appeared in the training examination in 1970 but the petitioner has shown his roll number as 207 which is evidently false. It has further been submitted that the duplicate certificate produced by the petitioner is also a forged document as contained in Annexure 8 to the reply of the counter-affidavit as the Bihar School Examination Board does not use the word "Dwitiyak". He further submitted that the Bihar School Examination Board always in describing the serial number on the certificate mention the series thereof as A, B, C or D but no number of series in certificate has been mentioned. In Annexure 8, which also is a pointer to the fact that the said certificate is a forged one.

8. In view of the submissions made by Mr. Giri, learned Counsel appearing for the Board, we are satisfied that the petitioner has obtained employment on the basis of a forged and fabricated document.

9. In *U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others*, , it has been held that when an admission was obtained on the basis of a forged certificate, the principles of natural justice are not required to be complied with. It was held as follows:

In such a case, the circumstances in which such benefit was taken by the candidates concerned would not justify attraction of the application of rules of natural justice of being provided an opportunity to be heard.

10. The principles of natural justice, as is well-known, is based upon two basic principles viz. *audi alterant partem* and *nemo debitor esse iudex in propria causa*. The principles of natural justice have been developed by the Apex Court from time to time adding now concepts therein. In some decisions the Apex Court has gone to the extent of holding that the principles of natural justice are embodied in Article 14 of the Constitution of India.

11. The Supreme Court in *Tulsiram Paul v. Union of India* AIR 1985(tm) SC 1416 dealt with the history of the principles of natural justice in paragraphs 72 to 80 of the judgment and thereafter, discussed various principles involved therein in paragraphs 81 to 82 thereof. The Supreme Court thereafter proceeded to consider the question as to how the said provisions have been interpreted by the Courts.

The Supreme Court held:

The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which the subject-matter of that article. Shortly, put the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination where discrimination is the result of State Action. It is a violation of Article 14. Article 14 however is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and

State action but also where any tribunal authority or body of men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.

However, it was also held that observance of principles of natural justice can be excluded by a statute either expressly or by necessary implication.

In Union of India (UOI) Vs. Col. J.N. Sinha and Another, , it has been held:

But if on the other hand, a statutory provision either specific or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the Legislature of the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of exercise of that power.

12. Reference in this connection may also be made to R.S. Dass Ors. Vs. Union of India (UOI) and Others, .

13. However, it is well-known that there are certain exceptions to the principles of natural justice. In the case of Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others, , it has been held:

From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience (sic) of the principles of natural justice Acts as deterrence to arrive at arbitrary decision in flagrant infraction of fairplay. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order-decision on the rights of the person and attendant circumstances.

14. In Ex. Capt. K. Balasubramanian and Others Vs. State of Tamil Nadu and Another, , it has been held that the principles of natural justice need not be complied with when the order does not involve civil consequences.

In Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , it has been held that the principles of natural justice are not required to be complied with in a case of compulsory retirement.

15. In Ram Krishna Verma and Others Vs. State of U.P. and Others, , it has been held:

The 50 operators including the appellants/private operators have been running their stages carriages by blatant abuse of the process of the Court by delaying the hearing as directed in Jewan Nath Wahal's case and the High Court earlier thereto. As a fact on the expiry of the initial period of grant after September 29,

1959 they lost the right to obtain renewal or to ply their vehicles, as this Court declared the scheme to be operative. However, by sheer abuse of the process of law they are continuing to ply their vehicles pending hearing of the objections. This Court in *Grind-lays Bank Ltd. T.T.O.* held that the High Court while exercising its power under Article 226 the interest of justice requires that any underserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised. It was further held that the institution of the litigation by it should not be permitted to confer an unfair advantage on the party responsible for it, In the light of that law and in view of the power under Article 142(1) of the Constitution this Court, while exercising its jurisdiction would do complete justice and neutralise the unfair advantage gained by the 50 operators including the appellants in dragging the litigation to run the stage carriages on the approved route of area or promotion thereof and forfeited their right to hearing of the objections filed by them to the draft scheme dated February 26, 1959. Moreover, since this Court in *Jewan Nath Wahal's* case upheld the approved scheme and held to be operative, the hearing of their objections would be a procedural formality with no tangible result. Therefore, the objections outlived their purpose. They are, therefore, not entitled to any hearing before the hearing authority.

16. As the petitioner has been found to have obtained his employment on the basis of a forged marks sheet and certificate, he evidently committed a fraud upon the appointing authority. An action based upon a fraudulent acts does not confer any legal right. The petitioner, thus, did not derive any legal right to continue to be in employment in terms of the appointment letter.

17. In view of his conduct, therefore, he is also not entitled to any relief from this Court.

18. For the reasons aforementioned, I am not inclined to exercise our jurisdiction in favour of the petitioner under Article 226 of the Constitution of India. As a criminal case is pending as against the petitioner, I wish to make it clear that I have refused to grant any relief to the petitioner only on the basis of a finding of a prima facie case against him which may not prejudice him in the criminal trial.

19. This application is, therefore, dismissed with the aforementioned observations, but without any order as to costs.

G.C. Bharuka, J.

20. I agree.