

(2009) 07 PAT CK 0030
In the Patna High Court
Case No : LPA No. 175 of 2009

The Governing Body, Sant Kabir College, Samastipur	APPELLANT
Vs	
Dr. Ram Chandra Rai and Others	RESPONDENT

Date of Decision : 02-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 406, 409, 420, 465
Prevention of Corruption Act, 1988 — Section 8
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(x)

Citation : (2009) 3 PLJR 695

Hon'ble Judges : Shiva Kirti Singh, Acting C.J.; Anjana Prakash, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard the parties and perused the order under appeal. The writ-petitioner was Principal of Sant Kabir College, Samastipur a College affiliated to Lalit Narayan Mithila University, Darbhanga. He preferred writ petition challenging an order dated 21.3.2007 by which the Secretary of the Managing Committee of the College informed him that since 22.1.2007 he was in custody in connection with a criminal case before the Special Court (Vigilance) for PC Act cases at Muzaffarpur. The communication further mentioned that as per Section 69 of the Bihar State Universities Act (hereinafter referred to as the Act) he was put under suspension since 22.1.2007. The communication further contained a direction that after his release from custody, during suspension period his Headquarter would be office of the College where he would record his presence before the Incharge Principal.

2. The suspension order was challenged by the respondent-writ petitioner through writ petition filed in the year 2008 after the College did not permit him to join the post of Principal when he applied for the same on 13.2.2008 after coming out of custody on bail.

3. The writ court has allowed the writ petition and quashed the suspension order mainly on the ground that for the period under custody there is a deemed suspension u/s 69(1) of the Act and for suspension for any period beyond the custody, a special order is contemplated u/s 69(4) of the Act which was not issued. Both the relevant provisions i.e. sub-section (1) and sub-section (4) of Section 69 are quoted herein below for easy reference:--

"(1) If any teaching or non-teaching employees of the University or a Constituent College is detained in custody under any law for a period upto 48 hours whether on a criminal charge or otherwise on security grounds, he shall with effect from the date of detention be deemed to have been suspended by the appointing authority.

(4) An employee against whom proceedings on a criminal charge are pending shall, by a special order to this effect, be kept under suspension during the period when he is not actually detained in custody or imprisoned (that is, when he is released on bail) if the charge made or the proceedings initiated against him are related to his status as an employee or in this manner may cause trouble in the discharge of his duties, or involves the question of moral turpitude. The provisions aforesaid shall apply in respect of his pay and allowances."

4. On a careful reading of the provisions quoted above, it is easily discernible that suspension for the period of custody has been provided under sub-section (1) of Section 69 without requiring any specific order to that effect because such suspension will be deemed according to the mandate of law. However, if the employer authority finds that proceedings on a criminal charge are pending against any employee then as per mandate of subsection (4) of Section 69 the employer authority shall, by a special order to this effect, keep the concerned employee under suspension during the period when he was not actually detained in custody or imprisoned provided the charge or the proceedings are related to his status as an employee or it may cause trouble in the discharge of his duty or involves the question of moral turpitude.

5. In the facts of the case, the employee was required to be kept under suspension because the nature of the criminal case under consideration clearly involves moral turpitude. The criminal case is under Sections 467/468/420/406 of the IPC and Section 8 of the Prevention of Corruption Act. For a Principal of any College, it will be embarrassing to work with such charges and it will have very bad effect on the students also.

6. From the rejoinder to the counter affidavit filed in this appeal it appears that subsequently the writ petitioner has been made accused in two other cases being Samastipur Town P.S. Case No. 738 of 2008 under Sections 409/420/465/467/468 of the Indian Penal Code and Samastipur Town P.S. Case No. 174 of 2008 under Sections 406/420/376 of the Indian Penal Code and Section 3(x) of SC/ST (Prevention of Atrocities) Act.

7. On a consideration of the entire facts and circumstances and the legal

provisions noticed above we find that Section 69(4) is attracted in this case on account of nature of the criminal case which involves issue of moral turpitude. It is further found that it was the statutory obligation of the concerned authority to keep the writ petitioner under suspension in terms of Section 69(4) of the Act even after he was released on bail. From the tone and tenor as well as wordings of the suspension order which was challenged in the writ petition, it is obvious that the competent authority had taken note of the criminal case and not being satisfied with deemed suspension of the writ petitioner the special order was issued to suspend him with a clear stipulation that even after coming out of jail custody he will continue under suspension and mark his presence at the Headquarter i.e. office of the Incharge Principal. In the facts of the case, we are further of the view that the conduct of the petitioner in trying to suppress the fact that he was in jail custody in the communications made to the College authority did not entitle him to protection under writ jurisdiction. For all the aforesaid reasons we allow the appeal and dismiss the writ petition.