
(1972) 08 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1661 of 1971

The Managing Committee Town Higher Secondary School

APPELLANT

Vs

Board of Secondary Education and Others

RESPONDENT

Date of Decision : 11-08-1972

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1973 Patna 240

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Advocate : Radha Raman, Man Mohan and Devendra Narain Sinha, for the Appellant; Surya Bhusan Prasad Singh and Uday Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Singh, J.—This application under Articles 226 and 227 of the Constitution of India has been preferred by the Managing Committee of the Town Higher Secondary School, Monghyr, through its Secretary, for quashing the order dated the 4th November. 1971 (Annexure 7) passed by the President, Board of Secondary Education, Respondent No. 1, setting aside the order of the petitioner discharging Yogeshwar Prasad Singh, respondent No. 4, from the post which he was holding as assistant teacher in the said school.

2. In order to appreciate the point involved in this application it will be necessary to state briefly the facts. On the 30th December. 1969, six charges were framed against respondent No. 4 -- vide Annexure 1. Those charges were served on the 16th January, 1970. Thereafter on the 29th August, 1970, respondent No. 4 showed cause vide Annexure 2. Subsequently, on the 26th October. 1970, the petitioner considered the show cause of respondent No. 4 and passed its resolution discharging the services of respondent No. 4, vide Annexure 3. Aggrieved with the order of the Managing Committee respondent No. 4 preferred an appeal before Respondent No. 1, who passed the impugned order.

3. Learned counsel appearing on behalf of the petitioner placed before me the impugned order. Annexure 7. The substance of the order is that the Regional Deputy Director (respondent No. 2) after hearing the appeal of respondent No. 4 had submitted his report on which the respondent No. 1 held by the impugned order that no sufficient ground for discharging respondent No. 4 from his service was made out and no opportunity to show cause was given to respondent No. 4 against the proposed punishment of discharge and accordingly he reinstated respondent No. 4 to his post.

4. Learned counsel for the petitioner urged that respondent No. 1 has erred in holding that the second show cause notice was necessary. In order to substantiate his point he relied on Lakshman Shastri Vs. The State of Bihar and Others, . That was a case in which a teacher was discharged from service by the Managing Committee under Rule 12 of notification No. II/R4-O1/55-E-5172 dated the 7th September. 1955, issued by the Education Department. In that case it was argued that the principle of Article 311 of the Constitution would apply and the teacher, before passing the order of discharge, ought to have been given second opportunity of show cause. Mr. S.N. Dutta had appeared on behalf of the teacher in that case. Learned counsel for the petitioner has drawn my attention to paragraph 20 at pages 778-779, the relevant portion of which reads as:

".....Mr. Dutta has said that the principle of Article 311 of the Constitution is applicable in this case, and a second notice should have been given by the Managing Committee to the petitioner; but he has not made reference to any rule which makes such a second notice necessary. Charges were served upon the petitioner, and full opportunity was given to him to defend himself. He did not fully avail himself of that opportunity. But that could not be a ground for giving a fresh notice....."

Therefore, their Lordships held that there was no merit in the point. In my opinion in view of the above Bench decision of this court the contention of the learned counsel for the petitioner is well founded.

5. Mr. Surya Bhusan Prasad Singh, learned counsel appearing on behalf of respondent No. 4 drew my attention to Rule 12 aforesaid, the relevant portion of which reads as:

"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."

In my opinion, however, that rule does not indicate that a second show cause notice should have been given to respondent No. 4. Learned counsel then referred to the clarification of the said Rule 12 issued by the Director of Public

Instructions under his letter No. 27603-705 dated the 28th May, 1970. In my opinion, the said clarification has no statutory force. Therefore it carries no weight. We have to interpret only the provisions contained in Rule 12 referred to above.

6. Learned counsel for respondent No. 4 then referred to the last paragraph of Annexure 1 which recites that within two weeks of the receipt of the said letter respondent No. 4 was asked to show cause against the allegations made therein as to why appropriate punishment should not be imposed against him. On the basis of the said recital learned counsel urged that the words "appropriate punishment" are vague particularly when five punishments are prescribed under Rule 12, referred to above. According to him, the Managing Committee ought to have clearly indicated what kind of punishment enumerated in Rule 12 it proposed to impose on respondent No. 4. Therefore, respondent No. 1 has rightly held that no opportunity was given to the petitioner to show cause against the proposed punishment to be imposed on him. In my opinion, this contention of the learned counsel for the respondent No. 4 is not acceptable. This could have been possible only when there was provision for giving a second show cause notice, as only in the second show cause notice it can be mentioned as to which type of punishment was proposed to be imposed on respondent No. 4. I have already mentioned earlier that a Division Bench of this court has held that in such a case no second show cause notice is necessary.

7. Learned counsel however, referred to the order dated the 4th November. 1971. (Annexure 7) and submitted that in the said order respondent No. 1 has also come to the conclusion that the charges levelled against respondent No. 4 were not established. Learned counsel submitted that, that is a finding of fact which this court should not interfere under writ jurisdiction. In my opinion, this submission of the learned counsel for respondent No. 4 is sound. On the other hand, learned counsel for the petitioner urged that respondent No. 1 has not passed speaking order and in order to substantiate his contention he has relied on Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, where their Lordships at page 1304 observed:

".....It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him; it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency."

In this connection he also referred to another decision of the Supreme Court in Travancore Rayon Ltd. Vs. Union of India (UOI), . In that case their Lordships

were considering the order made by the Central Government Their Lordships held that the orders made by the Central Government being subject to appeal to the Supreme Court under Article 136 of the Constitution, it would be impossible for that court exercising jurisdiction under Article 136, to decide the dispute without a speaking order of the authority, setting out the nature of the dispute, the arguments in support thereof raised by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute.

8. In my opinion, the above observations of their Lordships on the facts and circumstances of the instant case are not applicable. It may be noticed that in the present case in Annexure 7 respondent No. 1 has clearly mentioned regarding the report dated the 26th September 1971. submitted by the Regional Deputy Director respondent No. 2 and it was on the basis of that report that respondent No. 1 passed the impugned order. The said report was read over to me and it contains good and cogent reasons for coming to the conclusion that the charges levelled against, respondent No. 4 were not established. The impugned order, therefore, read together with the said report becomes speaking order and I do not see any reason to interfere with the impugned order on that ground.

9. Learned counsel for the petitioner then referred to Annexure 9, which is a letter dated the 31st August. 1971, from the Secretary to the Government of Bihar to the Accountant General. Bihar. He drew my attention particularly to paragraph 2 of the said letter, which indicates that the post of Director of Public Instructions was kept in abeyance. Learned counsel submitted that the Director of Public Instructions is the ex-office president. Hence, on the relevant date Mr. B.P. Gyani could not have passed the impugned order. According to learned counsel, he had no jurisdiction because of the direction contained in Annexure 9. On the other hand, learned counsel appearing on behalf of respondents 1 to 3 referred to various notifications of the State Government. On the 14th April. 1970, Mr. Gyani was appointed Director of Public Instructions for six months. By notification dated the 9th November. 1970, it was notified that he will continue to hold that post till further order. Then came the direction contained in Annexure 9, but its effect was obliterated by another notification No. 1 A/10-036/C/216 dated the 26th January, 1972. In view of the aforesaid notification, in my opinion, there is no merit in the contention advanced on behalf of the petitioner. Respondent No. 1 had ample jurisdiction to pass the impugned order.

10. In the result, the application is dismissed and the order passed by respondent No. 1 contained in Annexure 7 is affirmed. In the circumstances of the case there will be no order as to costs.