
(2009) 05 JH CK 0148

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4479 of 2005

Uday Kumar Sinha

APPELLANT

Vs

National Institute of Technology and Others

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 57 BLJR 2963 : (2011) 2 JCR 551

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Anil Kr. Sinha, for the Appellant; Rajiv Ranjan, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Sri Anil Kumar Sinha, learned senior counsel on behalf of the petitioner and Sri Rajiv Ranjan, learned Counsel on behalf of the respondents.

2. The petitioner in this writ application has prayed for quashing the order dated 16.07.2005 (Annexure-10) passed by the Respondent No. 2 by which the petitioner's services have been terminated from the post of Deputy Registrar (Academic) under the respondents, and has also prayed for all consequential reliefs including the continuation of service with all consequential benefits.

3. The questions raised by the petitioner are:

(i) Whether the impugned order of termination of his services was beyond the authority of the Chairman (Respondent No. 2) of the N.I.T.

(ii) Whether the impugned order is completely malafide and arbitrary and in violation of the principles of natural justice.

(iii) Whether the petitioner is entitled to get the relief prayed for along with heavy compensation.

4. Facts of the petitioner's case, which the petitioner would want to be recorded

is that in response to an advertisement issued by the Regional Institute of Technology (R.I.T.), Jamshedpur, the petitioner applied for the post of Deputy Registrar (Academic). On being selected, he was appointed on the post of Deputy Registrar (Academic), R.I.T., Jamshedpur on the pay scale of Rs. 2200-4000/- and joined service on 25.03.1996. Subsequently, the Board of Governors of the R.I.T., Jamshedpur had confirmed his services. Later, the R.I.T. was converted into National Institute of Technology (N.I.T.), Jamshedpur by the order of Government of India in the year 2002. The petitioner's pay scale was revised in the scale of Rs. 8,000-13,500/- and pursuant to the office order dated 21.04.2003, he was allowed the annual increments in his basic pay. The salary of the lecturers of the institute was also fixed at the same scale as that of the petitioner.

5. The petitioner's further contention is that in the duties assigned to him, he was never assigned any duty involving examination work of the Institute. Such works were entrusted to the Professor Incharge to whom the job was duly assigned. Yet, in the year 2003, the Dean (Academic), N.I.T., Jamshedpur issued verbal instructions to the petitioner to send the admit cards of the students to all the Heads of Departments for distribution to the students for appearing in the university examination. In compliance to the instructions, the petitioner, by his office order dated 10.10.2003 forwarded all the admit cards to the respective Heads of Departments. Some of the Heads of Departments including Dr. S.B.L. Saxena, Dr. S.N. Sinha, Department of Metallurgical and Dr. U.C. Ray, Department of Production Engineering had, by issuing an office note dated 11.10.2003, asked the petitioner to specify regarding the verification of the admit cards from the class teachers concerned. Since 11.10.2003 was a Saturday and the office hours, were restricted till 1.00 P.M., the petitioner could not obtain appropriate instruction from the Dean (Academic) promptly. On the re-opening of the office at about 10.00 A.M. on the following Monday, the petitioner was summoned to the office of the Respondent No. 3 in present of the Dean (Academic) and other Heads of Departments and was asked to explain as to why he did not reply to the query of the Heads of Departments on 11.10.2003. The petitioner was abused by the Respondent No. 3 in presence of the Heads of Departments and a complaint was forwarded by the Respondent No. 3 against the petitioner, to the Respondent No. 2. Upon receipt of such complaint, the Respondent No. 2 directed that the petitioner be placed under suspension with immediate effect pending disciplinary proceeding and till further orders. When even after more than five months of the order of suspension, no departmental proceeding was initiated, the petitioner filed a writ application before this Court against the order of his suspension vide W.P.(S) No. 2114 of 2004. The writ application was disposed of by this Court vide order dated 20.04.2004 directing the respondents to complete the departmental proceeding expeditiously, preferably within a period of six months from the date of submission of show cause replies by the petitioner to the charge sheet served on him. The petitioner submitted his replies to the charge sheet dated 13.04.2004 on 27.04.2004,

denying all the charges leveled against him.

6. When the departmental proceeding did not conclude within the period stipulated by this Court in the earlier writ application, the petitioner again filed another writ application vide W.P.(S) No. 6208 of 2004 which was disposed of on 01.12.2004 directing the respondents to conclude the departmental proceeding within a period of two months from the date of production of a copy of the order failing which the order of suspension shall stand revoked. A copy of the order was communicated to the Respondent No. 1 on 21.12.2004. When even thereafter the proceeding did not conclude within the stipulated period of two months, the petitioner submitted his joining report to the Director, N.I.T., Jamshedpur on 21.02.2005 which was duly received in the office. The petitioner was however, not allowed to join duty. On the petitioner's joining letter being rejected by the Director, N.I.T., the petitioner again moved this Court by filing writ application vide W.P.(S) No. 1021 of 2005. This Court vide its order dated 04.05.2005, allowed the writ application and quashed the order dated 21.02.2005 holding that the petitioner's suspension stood revoked by the operation of the order dated 01.12.2004 passed in the earlier writ application. This order was also communicated to the respondents which was received by the Deputy Registrar (Academic), N.I.T., along with the petitioner's joining letter.

When inspite of the aforesaid order, the petitioner was not allowed to join his service, the petitioner filed a contempt application before this Court vide Contempt (Civil) No. 487 of 2005 on 01.07.2005.

7. The petitioner's further case is that subsequently he received a confidential letter from the Chairman, Board of Governors of N.I.T., Jamshedpur (Respondent No. 2) containing a copy of the enquiry report submitted by the enquiry officer. From the conclusion arrived at by the enquiry officer, it transpired that the petitioner was not found guilty for charge No. 1 and 2 although 3rd charge was stated to have been proved on the ground of preponderance of probability and consequently the 4th charge was also claimed to have been proved. Yet, a show cause letter dated 13.06.2005 was served upon the petitioner stating that all the article of charges leveled against the petitioner in the departmental enquiry, have been established and the petitioner was therefore directed to explain as to why appropriate punishment should not be imposed upon him. The petitioner replied to the second show cause notice by giving his detailed and effective replies taking support from the judgments of the Supreme Court in the case of Managing Director, E.C.I.L. v. B. Karunakaran reported in 1993 SCC (L&S) 1184.

The show cause replies of the petitioner was not accepted and thereafter the impugned order of termination of his service was passed and the same was posted to the address of the petitioner.

8. Shri Anil Kumar Sinha, learned Counsel for the petitioner has challenged the impugned order mainly on the ground that the impugned order of termination has been passed by the Respondent No. 2 as the Chairman of the Board of

Governors. Learned Counsel argues that the Chairman has no authority or jurisdiction to pass any order in any disciplinary proceeding as because he is not the disciplinary authority in respect of the petitioner, as per the provisions of Memorandum of Association of the National Institute of Technology. Learned Counsel explains that the National Institute of Technology is a society, registered under the Societies Registration Act and as per Clause 9 of the Memorandum of Association, the Board of Governors comprising of a Chairman and ten other members. The powers and functions of the Chairman of the Board of Governors have been specified in Clause 13 of the Memorandum of Association and such powers do not extend to assume the role of the disciplinary authority individually or exclusively. Learned Counsel explains further that under Clause 19 of the Memorandum of Association, it is the Board who is the appointing authority of lecturers and above and all the academic staff and of the non-academic staff whose maximum scale of pay is equal to or more than that of the maximum of pay scale of the lecturer. In respect of other employees, the Director of the Institute is the appointing authority. On the basis of the above explanation, learned Counsel submits that the Chairman, in his individual capacity, being neither the appointing authority nor the disciplinary authority, could not have passed the impugned order of termination of the petitioner's services.

9. Learned Counsel adds further that even otherwise, while passing the impugned order, the Chairman has not considered the factual aspects of the case nor has he discussed the findings recorded by the enquiry officer in his enquiry report. The Chairman has, without assigning adequate reasons, refused to acknowledge the findings of the enquiry officer that the alleged incident in the office of the Dean involving the petitioner and the petitioner's reaction was on account of the heated arguments exchanged between him and the Dean. Learned Counsel adds that even otherwise, the punishment of termination of service is highly disproportionate to the charges.

10. Learned Counsel adds further that the impugned order of termination of petitioner's service has been passed in a most arbitrary and malafide manner by way of revenge against the petitioner's filing of the repeated writ applications and the contempt petition against the respondents.

On the other hand, Shri Rajiv Ranjan, learned Counsel for the respondents while offering support to the impugned order of termination, would (sic) that there was no illegality or impropriety in the manner in which the departmental proceeding was conducted against the petitioner. The charge against the petitioner was of gross indiscipline, dereliction of duty and misconduct. Witnesses examined at the departmental proceeding had confirmed the conduct of the petitioner as being a conduct of serious indiscipline and also dereliction of his duties. The petitioner was afforded adequate opportunity, not only of cross examining the witnesses but also of adducing evidence on his own behalf in defence. Learned Counsel explains further that though the enquiry officer has observed in respect of charge No. 1 and 2 that the same was not proved against the petitioner and has also

tried to dilute the gravity of the petitioner's misconduct by observing that it was only a reaction of the petitioner on account of heated arguments exchanged between him and the Dean, the disciplinary authority had found and assigned reasons to differ from such observations of the enquiry officer.

11. Sri Rajiv Ranjan would submit further that the Respondent No. 2 in his capacity of being Chairman of the Board of Directors, did not suffer from any incompetence in passing the impugned order of termination. Learned Counsel explains that the Chairman of the Board of Directors is deemed to be a representative and agent of the Board and the actions of the Chairman are therefore deemed to be the actions by and on behalf of the Board. Furthermore, the order of termination as passed by the Respondent No. 2 Chairman, was also ratified by the Board of Directors and as such the impugned order cannot be said to be illegal or contrary to the rules of procedure.

12. The attempt of the learned Counsel for the respondents is though appreciable but the arguments are not convincing and tenable. The powers and duties of the Chairman of the Board has been specified in Clause 13 of the Memorandum of Association of the Society and by no stretch of interpretation can it be said that the powers could extend to taking an independent and individual decision as a disciplinary authority in matter relating to departmental enquiry and punishment against the officers of the N.I.T. Admittedly, the Chairman in his individual capacity is neither the appointing authority nor the disciplinary authority of the petitioner. Such authority is exclusively vested in the Board of Directors. It implies therefore, that any decision relating to the disciplinary action against the lecturers and the non-teaching officers of the institute, has to be a collective decision of all the members of the Board. In absence of any special authority conferred by the Board upon the Chairman to deal with the disciplinary matter against the petitioner, the Chairman cannot claim and assume the power to exercise any such authority. As such, there can be no doubt that the impugned order, as passed by the Respondent No. 2, is beyond his authority and competence and the same cannot be sustained. The claim of the learned Counsel for the respondent that the impugned order was subsequently ratified by the Board, can be of no avail as because an illegal order passed by an unauthorised person, cannot possibly be ratified by the Board.

13. For the above reasons, this writ application is allowed. The impugned order dated 16.07.2005 (Annexure-10) of termination of the petitioner's service is hereby quashed. However, the Board of Directors of Respondent No. 1 may, in their discretion, take any appropriate decision on the basis of the enquiry report submitted by the enquiry officer in the disciplinary proceeding in respect of the petitioner after affording a reasonable and adequate opportunity to the petitioner of being heard.