

**(1965) 08 PAT CK 0005**

**In the Patna High Court**

**Case No :** Misc. Judl. Case. No. 807 of 1961

Virendra Kumar Sharma

APPELLANT

Vs

Sada Nand Chakravarty and Others

RESPONDENT

**Date of Decision :** 16-08-1965

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** AIR 1966 Patna 143

**Hon'ble Judges :** R.L. Narasimham, C.J;R.J. Bahadur, J;J.K. Sahai, J

**Bench :** Full Bench

**Advocate :** Bindeshwari Choudhary, for the Appellant; B.D. Singh, K.D. Chatterji and Sushil Kumar Majumdar, for the Respondent

## Judgement

1. This application under Article 225 of the Constitution was filed on 13-9-1961 and the only relief asked for was for an appropriate writ quashing the order of the Secretary, Ad hoc Committee, State Subsidised High School, Chandil, dated 13-5-1961 terminating the petitioner's service as headmaster of the said school. When the dispute came up for hearing before a Division Bench of this Court, the learned Judges by their order dated 28-4-1965 referred the case to a larger Bench on the ground that there was conflict between two Division Bench decisions of this Court, namely, Kabutra Kuer v. Board of Secondary Education 1963 BLJR 858 and Shri Gandhari Singh v. Managing Committee of Shri Durga Uchcha Vidyalaya, Naya Bazar, Lakhisarai, M. J. C. No, 1096 of 1964, dated 1-4-1965 (Pat) as to whether an unconfirmed teacher has a right of appeal under the provisions of the rules published on the 7th September, 1955 under notification No. 1I/R 4-01/55E-5172 of the Education Department of the Government of Bihar.

2. But when the case came up before this Bench, Mr. Bindeshwari Choudhary for the petitioner submitted that the disputed question of law does not arise for consideration here because the sole relief which he now wants is the quashing of the order of the appellate authority, namely, the President, Board of Secondary

Education, dated the 5th September, 1964 (Annexure X) which rejected his appeal against the order terminating his service as not entertainable on the ground that he was not confirmed in his appointment. Mr. Choudhary stated that the petitioner was not given an opportunity of being heard by the appellate authority and that if he had been given that opportunity, he would have been able to satisfy that authority that he was in fact a confirmed headmaster and not a temporary incumbent.

3. It is well settled that quasi judicial orders of appellate authorities should be passed only after the parties concerned are given a reasonable opportunity of being heard. It may be that the question of maintainability is a preliminary issue, but even in respect of this preliminary question, the appellant is entitled to be heard before the appellate authority makes up its mind. We must, therefore, hold that the order of the President, Board of Secondary Education, dated the 5th September, 1964 offends the well known principle of natural justice and we, therefore, quash the same. The appellate authority should give notice to the petitioner and to other persons interested, hear the appeal and dispose of it according to law.

4. So far as the legal question raised in the order of reference by the Division Bench is concerned, Mr. Choudhary quite fairly conceded that if he failed to show that he was a confirmed headmaster, he will not have a right of appeal, because no order of dismissal or discharge was passed against him within the meaning of Rule 15 of the Rules framed under notification No. II/R4-01/55E-5172, dated the 7th September, 1955, by the Education Department of the Government of Bihar, but the order only purports to terminate his service as a temporary incumbent consequent on the appointment of another person as headmaster. Hence the main question of fact as to whether prior to the termination of his service the petitioner was a permanent headmaster or a temporary headmaster must be decided by the appellate authority before disposing of the appeal.

5. For these reasons, the petition is allowed to the limited extent and the order dated 5-9-1964 (Annexure X) is quashed and the appellate authority is directed to dispose of the appeal according to law bearing in mind the observations contained in this judgment. There will be no order as to costs.

6. Let the records be immediately transmitted to the President, Board of Secondary Education, Patna.