

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4913 of 2001

Prabhu Nath Tiwary, son of Late Guru Prasad Tiwary, resident of village Sawanaha, P.S. Phulwaria, P.O. Bathua Bazar, District Goaplganj, at present posted as Senior Assistant in the Bihar School Examination Board, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Bihar School Examination Board, Patna through its Chairman.
3. The Administrator, Bihar School Examination Board, Patna
4. The Secretary, Bihar School Examination Board, Patna
5. The Additional Secretary, Bihar School Examination Board, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
With Mr. Nikhil Kumar Agarwal
For the BSE Board : Mr Ajay
For the State : Mr. Sunil Kumar Mandal, SC-24
With Arjun Prasad, AC to SC-24

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 28-07-2015

1. This application was filed seeking quashing of an order dated 09.01.2001 issued by the Additional Secretary, Bihar School Examination Board, Patna (hereafter referred to as the Board), whereby, he was put under suspension. During the pendency of the writ application and before the matter could be taken up on 19.04.2001, the disciplinary proceeding initiated against him concluded with passing of an order 11.04.2001 issued by the Administrator of Board, imposing upon the petitioner punishment of



dismissal from service of the Board. The petitioner sought to challenge the said order of dismissal dated 11.04.2001 by seeking amendment in the writ application through I. A. No. 1903 of 2001, which was allowed by an order of this Court dated 07.05.2001, making it clear that the said Interlocutory Application would be treated to be part of the writ application. The order dated 11.04.2001 imposing upon the petitioner, punishment of dismissal from service of the Board is thus under challenge in the present proceeding.

2. The petitioner was working as an Assistant in Bihar School Examination Board. On the charge of misconduct, a disciplinary proceeding was initiated against him with the issuance of charge-sheet dated 15.01.2001, under the signature of the Secretary of Board which has been brought on record by way of Annexure-4 to the present writ application. There were two charges against the petitioner. It was alleged against him that he allowed 23 examinees to appear in the Secondary Examination, 1990 without ensuring payment of examination fee. It was secondly, alleged against him that in the year 1992, he had allowed his daughter to appear in the examination illegally without her registration with the Board. The petitioner submitted his written statement of defence on 31.01.2001, denying the allegation made against him in the charge-sheet. It is the petitioner's case that without there being any departmental enquiry, a



second show cause notice was served upon the petitioner through letter dated 27.02.2001, issued under the signature of the Secretary of Board asking him to show cause as to why he be not dismissed from service of the Board. The petitioner appears to have replied to the said second show cause notice. While replying to the second show cause notice, the petitioner had sought for certain documents on the ground that the charges levelled against him were stale of the year 1990 and without examining such document, it was not possible for him to file his effective reply to the second show cause notice. It is the case of the respondent that the documents as demanded by the petitioner after issuance of second show cause notice were supplied to him. The Administrator of the Board passed impugned order dated 11.04.2001, considering the petitioner's reply to the second show cause notice, decided to impose upon the petitioner, punishment of dismissal from service and accordingly, passed the impugned order dated 11.04.2001 to this effect which is under challenge in the present writ application.

3. A counter affidavit has been filed on behalf of the respondent Board, bringing on record the enquiry report submitted on 14.02.2011 by the Inquiry Officer. A report of the Vigilance Officer said to have been submitted on 21.12.1991 has also been brought on record by way of Annexure-A to the counter affidavit in support of the plea that the conduct of the petitioner in accepting application

forms for the Secondary Examination without payment of the examination fee was detected in the year 1991 itself. There is no explanation however, as to what prevented the Board from taking appropriate action immediately, thereafter, and the charge-sheet was issued to the petitioner by the Board in 2001.

4. Mr. Y. V. Giri, learned senior counsel appearing on behalf of the petitioner assailing the impugned order has submitted that there was absolutely no enquiry of any nature to enquire into the petitioner's conduct with reference to the charge-sheet dated 15.01.2001. He submits that no date was fixed by the Inquiry Officer for conducting enquiry. No witness was produced before him in support of the charges levelled against the petitioner. He has further contended that as a matter of fact, no Presiding Officer was appointed and Inquiry Officer recorded his conclusion that charge No.1 against the petitioner stood proved, though he held charge No.2 as not proved. Mr. Giri also contended that the Inquiry Officer relied on the report of the Vigilance Officer of the Board on 21.12.1991 which was not accepted to the petitioner at any stage and for this reason also the enquiry report cannot be sustained..

5. In order to ascertain as to whether any departmental enquiry of any sort was ever held, this Court had directed the Board to produce the original records, maintained by the Board, connected to



the departmental enquiry held against the petitioner. The records have accordingly, been produced. Upon perusal of the original records, it is evident that there was absolutely no date fixed by the Inquiry Officer for holding the departmental enquiry. No conducting Officer was appointed to establish the charge framed against the petitioner before the Inquiry Officer. In my opinion, keeping in view of its nature, the charge framed against the petitioner, read with his written statement of defence, could be proved only through oral and documentary evidence. Apparently, there was nothing on record worth evidence before the Inquiry Officer, on the basis of which he could hold that the charge No.1 against the petitioner stood proved. I find that the report of the Inquiry Officer is completely perfunctory and similar is the case with the order dated 11.04.2001 passed by the disciplinary authority i.e. Administrator of Board, whereby punishment of dismissed from service upon the petitioner came to be imposed.

6. Learned counsel appearing on behalf of the Board, resisting the submissions made on behalf of the petitioner has contended that Charge No.1 against the petitioner of having accepted examination forms without examination fee is of grave nature and in the facts and circumstances of the case, decision to impose punishment of dismissal cannot be said to be unjustified. He has

further contended that the petitioner has not pleaded any prejudice caused to him because of non production of the witnesses in course of departmental enquiry and in the absence of such plea, this Court is not required to interfere with the impugned action.

7. It has been stated at the bar that the petitioner attained the age of superannuation during the pendency of the writ application and there is no provision under the Rules governing service condition employees of the Board, for taking disciplinary action against its retired employees.

8. I find substance in submission made on behalf of the petitioner that there was absolutely no departmental enquiry held and findings of the Inquiry Officer are based on no evidence and therefore, they are perverse. In my opinion, it was the responsibility of the disciplinary authority to have ensured that the departmental enquiry was conducted in accordance with law and the procedure prescribed therefor. The disciplinary authority, the Administrator of the Board, in my opinion, has acted in an irresponsible manner by imposing punishment upon petitioner dismissal from service of the Board on the basis of “perfunctory departmental enquiry”/ “no enquiry”. The impugned order is not sustainable on the ground of violation of principles of natural justice. It is evident from the records that in the present case, Inquiry Officer conducted himself as Prosecuting Officer

also and he failed to act in an impartial manner as was expected of him in his role of quasi judicial authority.

9. For the reasons above, the impugned order dated 11.04.2001 is quashed. The consequences of quashing of the order dated 11.04.2001 shall follow. The petitioner shall be entitled for all back wages for the period during which he had to remain out of service because of the said illegal order dated 11.04.2001 till the date he attained the age of superannuation. The Board shall proceed for clearing his back wages and allowing him other consequential benefits, as if no order of dismissal was ever passed against him.

10. Normally, the matter would have been remanded back after quashing of the order of dismissal dated 11.04.2001 to the disciplinary authority to proceed afresh from the stage when charges were framed, but in view of the fact that the charge for which the petitioner was proceeded against in the year 2001 related to 1990 and because the petitioner has already attained the age of superannuation during the pendency of the writ application, coupled with the fact that there is no provision for taking disciplinary action after retirement of an employee of the Board, I am of the view that it would be inequitable and unjust to remand the matter back at this stage.

11. Before I part with, I record my strong disapproval for the manner in which the entire departmental proceeding was

conducted and the disciplinary authority imposed the order of dismissal, which has led this Court to quash the order of dismissal and I accordingly impose cost of Rs. 20,000/- to be paid by the Board to the petitioner. I, hereby, issue a note of caution to the disciplinary authority of the Board that consequences may be serious if because of latches on the part of the disciplinary authority and Inquiry Officer, the delinquent facing serious charges are let off, on technical ground.

12. The arrears of salary, the back wages and emoluments as well as cost as awarded must be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order, failing which it will incur interest at the rate of 9% per annum. This will be subject to the condition that while producing a copy of this order before the Secretary of Board, the petitioner files an affidavit that he was not gainfully employed else where, during the period of order of dismissal from service of the Board remained in force. The disciplinary authority is also directed to take a decision as regards payment of full salary for the period during which the petitioner remained under suspension, within a aforesaid period of three months.

13. This writ application is accordingly, allowed, with the order and direction as above.

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(Chakradhari Sharan Singh, J)