

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.828 of 2014

IN

Civil Writ Jurisdiction Case No. 5082 of 2007

- =====
1. The Chairman Bihar School Examination Board , Patna.
 2. The Secretary, Bihar School Examination Board, Patna.

.... Appellant/s

Versus

1. Jai Mangal Singh son of Late Jai Bisun Singh, resident of village & PO Tehta PS Makhdumpur, District Jehanabad.
2. The State of Bihar through the Secretary cum Commissioner, Deptt. of Human Resources, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyabir Bharti & Ms Aparna Arun

For the Respondent No.1 : Mr. Manoj Kumar Ambastha

For the Respondent No.2 : Mr. Sanjay Kumar, AC to GP5

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 02-02-2016

Heard the parties and with their consent, instead of coming to the stay application(I.A.No. 4284 of 2014), as filed by the appellants, we are disposing of the Appeal itself at this stage.

2. The Bihar School Examination Board and its Secretary are the appellants. Being aggrieved by the judgment and order dated 17-2-2014 passed by a learned Single Judge of this Court in C.W.J.C.No. 5082 of 2007(Jai Mangal Singh Vs. The State of Bihar & others), the writ petitioner, who is respondent no.1 in this Appeal, had filed the writ petition, challenging the order of dismissal from

service, as inflicted by the Disciplinary Authority, and not interfered in the appellate proceeding.

3. The learned Single Judge allowed the writ petition and set aside the order of Disciplinary Authority, primarily on two grounds; firstly that before the Enquiry Officer the Department had not examined any witness and the writ petitioner, the delinquent, was examined straightway, which was not procedurally correct, and second that, in spite of repeated requests of the delinquent, he was not supplied the documents, as asked for. It is principally on these two grounds that the findings of the Disciplinary Authority, as affirmed at the appellate stage, were set aside by the learned Single Judge with liberty to reinitiate the proceeding from the stage of charge, if the Pension Rules provide it, as during the pendency of the writ petition, the writ petitioner superannuated from service. It may be pertinent to note that Mr. Satyabir Bharti, learned counsel for the Board, points out that the Pension Rules, as applicable to the employees of the Bihar School Examination Board do not make provision for continuance of the disciplinary proceeding or initiation thereof after an employee has superannuated.

4. On behalf of the appellants it is submitted that the rules of procedure are for ensuring compliance of principles of natural justice and not to act technically to cut into the decision taken. It is



submitted that the learned Single Judge himself has noticed in the judgment that upon application being filed for supply of documents, considering the substantive nature of the documents, undisputedly the writ petitioner was allowed to examine what he wished, in the Computer Cell in presence of the Enquiry Officer. This is not denied. Then to say that the documents not having been supplied would vitiate the proceeding, would be incorrect, unless some prejudice is shown by non-supply of the documents. He further points out that even in the application, requesting for supply of documents, at no point of time any particular document was asked for. A bald application for supply of documents was made repeatedly even after all the documents were made available for his inspection. Thus, it is submitted that the learned Single Judge was not correct in his approach in this regard to the facts, and in the matter. It was then submitted that the writ petitioner was fully aware of the charge, which was very serious, where the Original Tabulation Register of Matriculation results had been interpolated. The writ petitioner had been charged along with others, who had conspired and acted in conspiracy to make interpolation. The writ petitioner was aware of the charge. There is no denial that there was interpolation. It was all a matter of record. Then to insist upon examination of witnesses in support thereof, as was required by the learned Single Judge, was not correct. Further, it is

submitted that once such an objection was raised upon submission of Enquiry Report, and the second show cause being issued, the learned Single Judge failed to notice, that the Disciplinary Authority himself called all the official witnesses, who were then examined and cross-examined. Thus, before the decision was taken by the Disciplinary Authority, even that technical objection, stood cured.

5. On the other hand, learned counsel for the writ petitioner-respondent no.1 submits that the charges and the consequences being great, the onus lay upon the Department to establish the guilt, and no person, other than the writ petitioner, having been examined at the stage of enquiry, the order passed in the disciplinary proceeding stood vitiated. He then submits that the demand of documents being there, procedurally non-supply thereof itself is a prejudice. He further submits that from the material and evidence on record, it cannot be said that the writ petitioner was guilty beyond reasonable doubt and, therefore, there was no occasion for the extreme punishment of dismissal.

6. We have heard the parties, perused the records and considered the matter.

7. We may first refer the last part of the submission on behalf of the writ petitioner that the materials do not justify the guilt beyond reasonable doubt. This is based on a misconception. There is



a distinction between a criminal trial and a civil proceeding. In criminal trial it is the duty of the prosecution to prove by evidence the guilt of accused beyond reasonable doubt, but that is not the case when it comes to civil proceedings. The civil proceedings i.e., civil suits and departmental proceedings are based on appreciation of preponderance of evidence. Theoretically and practically there may be cases in which a person may be acquitted of the criminal charges, but yet can be held guilty in disciplinary proceedings on the basis of same set of evidence. Therefore, to urge that the Disciplinary Authority does not find the writ petitioner guilty beyond reasonable doubt and therefore, the order must be set aside, cannot be sustained.

8. Now, coming to two aspects, as considered favorably by the learned Single Judge in support of the writ petitioner. Firstly, the learned Single Judge took note of the fact that the writ petitioner, delinquent, had been repeatedly asking for documents to be supplied and the documents were, in fact, not supplied. We have looked into the writ records and found that each application made by the writ petitioner for documents was virtually repetition of the earlier documents with change of dates. No specific document is at all mentioned therein. That coupled with the fact , as noticed by the learned Single Judge himself, and not disputed by the writ petitioner either before the learned Single Judge or before this Court, that the



writ petitioner was permitted by the Enquiry Officer to see and examine all the documents he wished, in the Computer Cell in presence of the Enquiry Officer. This fact not being disputed, clearly shows that the writ petitioner, delinquent, was not taken by surprise in respect of any document that was to be used against him. He has made no grievance at any stage that any particular document he wanted was not shown to him. Rules of natural justice, specially in a departmental proceedings which is domestic enquiry, do not rigidly lay down that each and every document must necessarily be given to the delinquent, and failure to do so would vitiate the enquiry. The writ petitioner was aware of the charge. He was holding a responsible office. He knew the consequences thereof. All documents which he wanted to see were made available. Nothing that he demanded was denied, except the physical copies thereof. In our view, this by itself is not sufficient to vitiate the proceedings.

9. Mr. Satyabir Bharti, learned counsel for the Board, has pointed out from the records that when such an objection was raised by the delinquent, pursuant to the show cause issued by the Disciplinary Authority, upon receipt of the enquiry report, the Disciplinary Authority made over all the copies of the documents to the delinquent. Upon objection that no official witness had been examined, even though the matter was all of record, the official



witnesses were called, examined and cross-examined in presence of the Disciplinary Authority himself before the final order was passed. What prejudice was caused to the delinquent is not pleaded and not shown at any stage. The charge was serious and was based upon interpolation of the Original Tabulation Register in respect of date of birth of a Railway employee, which was found to be interpolated in the period when virtually the delinquent and a few others had access to those documents/registers. All of whom have been proceeded and dismissed. Thus, this ground of non-supply of documents vitiating the disciplinary proceeding in the facts and circumstances, noted above, does not stand to reason and cannot be sustained.

10. We may now come to the question of examination of witnesses. Even today, it is not disputed that the allegations were matters of record. The delinquent naturally denied the allegations of having done the interpolation, but he was aware of the charge. He was aware of the facts. Those facts were matters of record. The records were made available to him. He did not question the correctness or otherwise of the records. He offered himself to be examined by the Enquiry Officer. Notwithstanding this, when objection was taken by him before the Disciplinary Authority, all the persons who were connected with this episode were brought, examined and cross-examined before the Disciplinary Authority and all the documents

were made over to the delinquent by the Disciplinary Authority, and then the Disciplinary Authority passed the order. We may note that it is beyond doubt that the Disciplinary Authority is not bound by the findings recorded by the Enquiry Officer, for, the Disciplinary Authority has to come to his own independent finding. In the present case, we have noted and seen that all the objections that were raised by the delinquent as to non-examination of witnesses and non-grant of copies of documents, all were met by the Disciplinary Authority before he heard the matter finally, and decided. Thus, in our view, there was substantial compliance of procedural requirement, and the requirement of natural justice. We, thus, cannot sustain the judgment of the learned Single Judge.

11. In the facts and circumstances and for the reasons, noted above, we allow this Appeal, set aside the judgment and order of the learned Single Judge and restore the decision of the Disciplinary Authority.

(Navaniti Prasad Singh, J)

B.K.Roy/-

AFR

(Nilu Agrawal, J)

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