

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.935 of 2011

In
Civil Writ Jurisdiction Case No.10350 of 2004

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1. The Bihar School Examination Board through its Administrator, Patna
 2. The Administrator, Bihar School Examination Board, Patna
 3. The Secretary, Bihar School Examination Board, Patna
 4. The Assistant Secretary-cum-Enquiry Officer, Bihar School Examination Board, Patna

... .. Appellant/s

Versus

Baleshwar Pandey, S/o- Late Raghunath Pandey, Resident of Rejendra Nagar,
In from of Rajendra College Hostel, P.O.- Gudri, P.S.- Bhagwan Bazar, Dist.-
Chhapra

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Girijish Kumar, Advocate
For the Respondent/s : Mr. Shashi Shekhar Tiwary, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2017

Seeking exception to an order dated 17th of August, 2010 passed by the learned Writ Court in C.W.J.C. No.10350 of 2004, this appeal has been filed under Clause 10 of the Letters Patent.

Respondent employee was working in the Bihar School Examination Board when a charge-sheet was issued to him with regard to certain acts of commission and omission and based on a so called departmental enquiry conducted into the matter, an order was passed on 21.2.2004 whereby 25% of pension was



directed to be recovered and further a direction for recovery of Rs.44,000/- from the amount payable against leave encashment and a few other claims were ordered.

Challenging the same, the respondent employee filed the writ petition and during the course of hearing of the writ petition, it transpired that the action has been taken after conducting an enquiry in view of the powers available with the Board under Rule 43(b) of the Bihar Pension Rules. The learned Writ Court went into various aspects of the matter and found that the departmental enquiry has not been properly conducted, along with the charge-sheet neither documents were brought on record in the enquiry or exhibited nor witnesses examined in the departmental enquiry. It was observed by the learned Writ Court that in pursuance to the show cause notice filed, certain papers were shown to the petitioner and after conducting mere formalities, the impugned action was taken. The learned Writ Court finding the action taken to be unsustainable, in para 6 of the judgment observed that, in the facts and circumstances of the case, the matter normally should have been remitted to the authority concerned for holding the departmental enquiry afresh from the stage of submission of reply to the charge-sheet and pass a fresh order. However, since the petitioner had retired several years back,



the Court was not inclined to remit the matter, but directed for settling his claim.

Now this appeal has been filed and it is the case of the appellants before us that once the departmental enquiry stood vitiated on various grounds as are indicated by the learned Writ Court, the learned Writ Court should have permitted the authority to proceed with the enquiry and take action in accordance with law. While hearing the matter, this Court passed an interlocutory order on 30th of August, 2011 granting liberty to the Board to proceed with the enquiry from the stage of submission of enquiry report and by filing the supplementary affidavit it is indicated that while concluding the enquiry from that stage, again recovery of 25% pension and the same punishment which was initially imposed has been maintained and, therefore, it is said that now the petitioner is required to challenge this subsequent order.

The respondent employee by filing I.A. No.5308 of 2016 has challenged this order also in appeal. That apart, learned counsel appearing for the respondent argues that once in the writ petition the learned Writ Court has found that no witnesses were examined and no departmental enquiry was conducted as per requirement of law, the interlocutory order giving direction for conduct of the departmental enquiry from the stage of submission



of enquiry report itself was not proper as without conduct of a proper departmental enquiry even the enquiry report stands vitiated and, therefore, the order passed by the learned Writ Court should be restored and the interlocutory order passed on 30th of August by this Court should not be confirmed as it does not meet the requirement of law.

We have heard learned counsel for the parties at length and have gone through the original records of the writ petition which is available before us. On going through the original records, we find that the charge-sheet was issued to the respondent employee on 14.7.2001 (Annexure 5), he submitted his explanation to the same. Thereafter, even though it is stated in the counter affidavit that a conducting officer was appointed and the conducting officer held the enquiry and submitted his report vide communication dated 10.8.2002 and the report is available at page 30 of the counter affidavit filed by the Board, we find that neither the order passed by the disciplinary authority appointing a conducting officer nor the proceedings of the departmental enquiry are available on record. On the contrary, a perusal of the enquiry report indicates that it is a report wherein the charges levelled against the employee are indicated, his explanation is also indicated and thereafter without examining any witness, merely on



the basis of the explanation given by the employee concerned, his defence is rejected and a finding recorded that he himself admits most of the charges.

It is because of all these factors which clearly establishes that an enquiry as required under law has not been conducted that the Writ Court has held that the entire action stands vitiated. However, having held so, the learned Writ Court committed a patent error in not granting liberty to the respondents to proceed with the enquiry with the stage of issuance of charge-sheet as that is the requirement of law as laid down by the Hon'ble Supreme Court in the case of Managing Director E.C.I.L., Hyderabad & Ors. Vs. B. Karunakar, (1993) 4 SCC 727, and to that extent there is an error in the order passed by the learned Writ Court. That apart, once the entire enquiry stood vitiated and it was a case where the employee was not at all suspended but all the punishments given effect to, the punishment would have only prospective effect and the subsequent direction issued by the Writ Court to give the benefit of pension and all other benefits needs no interference. That apart, once we find that the entire enquiry stands vitiated and the report submitted by the Enquiry Officer is also not in accordance with law, the interim order passed by this Court in these proceedings on 30th of August, 2011 granting liberty to the



Board to proceed with the enquiry from the stage of submission of enquiry report cannot be confirmed and given approval by this Court for the simple reason that we have held that any subsequent action on the basis of such an illegal enquiry cannot be approved and based on the same no further action can be undertaken.

Keeping in view the aforesaid, we allow the appeal in part. The order passed by the learned Writ Court, so far as it prevents the appellant from conducting the enquiry from the stage of issuance of enquiry stands quashed and the other part of the order is approved. Now liberty shall be available to the Board to proceed with the enquiry from the stage of issuance of charge-sheet and take such steps as are permissible under law for bringing it to a finality and passing an order of punishment, if required, preferably within a period of six months from the date of receipt/production of a copy of this order.

That apart, entire benefits accruing to the petitioner on his retirement should be paid to the petitioner within a period of 60 days from today and liberty shall be available to the appellant to pass order of punishment after conclusion of the enquiry, if required. However, pendency of the enquiry shall not be a ground for withholding any of the benefits of the petitioner and the benefits shall be calculated in a manner as if no punishment were



imposed upon him till date and the same shall be paid to him within a period of 60 days from today.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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