

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1299 of 2007

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Raj Kishore Singh, Son of late Indradeo Singh, resident of village – Mahmadpur,
P.S.- G.B. Nagar in the district of Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Human Resources Development Department, Govt. of Bihar,
Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Superintendent of Education, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Prabhat Kumar Singh, Advocate
For the Respondent/s : Mr. Madhukar Krishna Sinha, SC-1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 25-06-2018

Heard learned counsel for the petitioner and
respondents.

2. The petitioner has challenged the order of
termination contained in Memo No.1640 dated 29.04.2005 and also
for follow up direction to the respondents to grant pensionary benefits
to the petitioner.

3. Mr. Rajendra Narayan, learned senior counsel, with
reference to the order passed by this Court on 26.7.2011, submitted
that the action of the respondents in terminating the services of the
petitioner is illegal, arbitrary and without jurisdiction. The relevant
part of the order dated 26.7.2011 is quoted herein below:

“The petitioner in this writ application has



assailed his order of dismissal from service dated 29.04.2005 on the ground that it is not only an ante-dated order passed after superannuation of the petitioner from service on 30.04.2005 but even otherwise is not sustainable. In this context learned counsel for the petitioner has submitted that there is no provision for automatic dismissal of a teacher from service on the ground of his conviction by a court of law.

Learned counsel for the State, on the other hand, with the help of counter affidavit filed by him has tried to explain that the petitioner was a Government servant and once he was convicted for offence under section 302 of the Indian Penal Code and sentenced to undergo life imprisonment by the trial Court on 30.01.2004 and his appeal also was dismissed by this Court on 30.10.2004, he would not be entitled to continue in service being a convict. In this context he has also submitted that the petitioner's appeal before the Supreme Court has also been dismissed on 25.11.2005 and as such, when he is serving sentence of his life imprisonment, he cannot claim either continuation of his service or the benefit of receiving pension and other post retirement benefit as a pensioner. He has also submitted that the order dated 29.04.2005 was passed while the petitioner was continuing in service and that too after giving him a show cause notice.

In the considered opinion of this Court the crucial question would be that when there is no provision made in the statutory service Rules



governing the petitioner, namely, Bihar Rajkiyakrit Prarambhik Vidyalaya Shikshak (Asthanantaran Awan Anushashnik Karwai) Niymawali, 2002, envisaging automatic termination of service on the ground of conviction in a criminal case, the respondents would require to explain in detail the mode and manner adopted for dismissing a convicted teacher from service. It has to be kept in mind that under 2002 Rules a teacher can be inflicted the punishment of removal/dismissal from service only by way of major punishment which has to be made after following the prescribed procedure of framing charge and conducting the departmental proceeding.

It is true that under proviso to Article 311(2) of the Constitution of India a public servant convicted by a Court of law can be removed from service without conducting a departmental proceeding but then there has to be some provision made in the statutory Rule. The counter affidavit, however, is curiously silent on these vital aspects.”

4. Mr. Narayan submitted that in the instant case, it would be manifest that the petitioner was condemned unheard. He submitted that the service rule applicable to the petitioner at the relevant time does not permit automatic termination, out of criminal conviction in a criminal case by a competent Court. He submits that the order of termination suffers from procedural impropriety and such order cannot sustain.



5. Mr. Narayan next submitted that the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 came into force on 30.07.2005 whereas the petitioner was removed from service on 29.04.2005 and such Rule, 2005 will not apply in the present case.

6. There is no dispute that the petitioner was convicted by a criminal court for an offence under Section 302 of the Indian Penal Code. There is no dispute that the conviction of the petitioner was affirmed by the Appellate Court. The only rub in the present case is whether the termination of the petitioner in absence of specific rule which provide such action as automatic action on conviction by a competent criminal court or the respondents should follow a fair proceeding before taking any decision in departmental proceeding simply on the basis of conviction in a criminal case. One has to keep in mind that the standard of proof in departmental proceeding is preponderance of probability, whereas in criminal case the prosecution has to bring home the charge beyond all reasonable doubt.

7. In a case like instant when the conviction for an offence under Section 302 of the Indian Penal Code was affirmed in appeal, the Court has to see the effect of procedural impropriety in the departmental proceeding.



8. Mr. Narayan submits that proviso to Article 311(2) of the Constitution permits that after conviction by a competent court of law punishment in departmental proceeding is permissible without conducting full dressed departmental proceeding. However, he submits that when the case of the petitioner is governed by specific rule and if the specific rule is silent, the principle contained in proviso to Article 311(2) of the Constitution will not apply in the case of the petitioner.

9. Referring to 2002 Rule, he submits that under the said rule, which was applicable at the relevant time, the automatic action of dismissal from service is only on the ground of conviction and approval by the Appellate Court is not sustainable.

10. It is true that the Service Rules applicable to the petitioner at the relevant time does not provide specific provision for termination on the ground of conviction by a competent Court, but in case such course of action is permissible under the constitutional scheme contemplated under Article 311 (2) Proviso, the situation may be different. Mr. Narayan submitted that Article 311 (2) Proviso is attracted in a case only when there is a rule framed under Proviso to Article 309 of the Constitution of India. He submits that the Scheme under Article 311(2) of the Constitution has to be read along with Article 309, Article 310 which is a check on the arbitrary



discretionary power of the employer while exercising power under aforesaid constitution scheme of doctrine of pleasure.

11. The issue whether proviso to Article 311(2) of the Constitution is applicable only in any case whereas the specific rule under Article 309 Proviso has been framed or not is not required to examine in the present proceeding for the simple reason that this Court in the facts of the case noticed procedural impropriety and as such it proposes to remit the matter back in the light of the Apex Court judgment in the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar**, reported in (1993) 4 SCC 727, the Constitution Bench of the Apex Court has held out that in case of procedural impropriety, the matter has to be remitted back and it has to be started from the stage the infirmity in procedure is noticed.

12. In the light of the aforesaid judgment, the Court is of the view that the matter requires rehearing de-novo, but the petitioner attained the age of superannuation and as such the departmental proceeding cannot be reopened.

13. Under the aforesaid circumstances, the departmental proceeding after attaining the age of superannuation is impermissible. However, such action is permissible under the Bihar Pension Rules. It is true that the pension is not bounty, but it is subject to condition under Pension Rules grant of pension depends on many



factors. Rule 43(b) and 139 of the Bihar Pension Rules are definite guidelines in the matter of grant of pension.

14. Under the peculiar facts and circumstances, the Court while quashing the order contained in Annexure-6 and remitting the matter back to the respondents directs the respondents to act in accordance with the principle laid down in the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar** (supra) and Rule 43(b) and 139 of the Bihar Pension Rules and take final decision on remand by a reasoned and speaking order within a period of six months from the date of receipt/production of a copy of this order after providing opportunity of fair hearing to the petitioner under Bihar Pension Rules.

15. The writ application is allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.07.2018
Transmission Date	

