

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11909 of 2007

Arjun Choudhary, son of late Saryug Choudhary, Resident of Mohalla,
Saidnagar, Near Kali Asthan, P.O. & P.S. Laheria Seraj, Dist. Darbhanga.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Human Resource Development, Govt. of India, New Delhi.
2. The Joint Secretary (Languages) Ministry of Human Resource Development, Govt. of India, New Delhi.
3. The Director (Languages) Education Department, Ministry of Human Resource Development, Govt. of India, New Delhi.
4. The Rastriya Sanskrit Sansthan, through its Registrar, 56-57, Institutional Area, Janakpuri, New Delhi.
5. The Vice Chancellor, Rastriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.
6. The Registrar, Rastriya Sanskrit Sansthan, 56-57, Institutional Area, Janakpuri, New Delhi.
7. The Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, through its Chairman, at & P.O. Kolhanta Patori, P.S. Moro, Dist. Darbhanga.
8. Chairman Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at & P.O. Kolhanta Patori, P.S. Moro, Dist. Darbhanga.
9. Dr. Sadanand Jha, Scholar nominee of Union of India, Member, Managing Committee, Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at & P.O. Kolhanta Patori, P.S. Moro, Dist. Darbhanga.
10. Deb Narayan Yadav, State of Bihar representative member, Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at & P.O. Kolhanta Patori, P.S. Moro, Dist. Darbhanga.
11. Ramanuj Sharma, founder society (Annapurna Rajkumari Ganesh Sharma Kendriya Sanskrit Vidyapith, Kolhanta Patori) representative member Managing Committee Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, at & P.O. Kolhanta Patori, P.S. Moro, Dist. Darbhanga.
12. Principal, Raj Kumari Sharma Sanskrit Vidyapeeth, Kelhanta Patory.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Sahi, Adv. Mr. Amarendra Narayan
For the Resp. 1 to 3	:	Mr. Satya Brat Verma, Adv.
For the Resp. 7 to 8	:	Mr. Yugal Kishore, Sr. Adv. Mr. Hemant Kimar Jha, Adv.
For the Resp. 11	:	Mr. Prabhat Kr. Singh, Adv.
For the Resp. 12	:	Mr. Sunil Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 03-04-2018



Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order dated 19.12.2003 (Annexure-15) passed by the Chairman cum Disciplinary Authority, whereby and whereunder, he has been dismissed from service and further challenging the order passed by the appellate authority dated 4.6.2007 (Annexure-24) by which the appeal of the petitioner has been rejected thereby affirmed the order of dismissal.

In the present case, the petitioner has raised various points of malicious act on the part of the authority of the University and wrongly been dismissed without following the proper procedure as provided under Rule 14 of the CCS & CCS Rule which is applicable to the employees working in the Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, Darbhanga.

As per claim of the petitioner, he was founder teacher of Rajkumari Ganesh Sharma Sanskrit Vidyapith, Kolhanta Patori, Darbhanga, has been established by the people of the society which was registered under the Society Registration Act, 1980 to preserve and propagate the ancient language Sanskrit. The Government of India assists the college to the extent of 95% of the admissible expenditure for the recurring items and for 75% non-



recurring items as envisaged in Clause 15 of the Scheme and rest expenses are borne by parent/founder body.

The petitioner was appointed on the post of Principal of the college vide letter dated 24.1.1986 under the signature of the Chairman and he was discharging the duty with utmost devotion and diligence. Unfortunately, a dispute cropped up between the petitioner and one Ram Raghav Choudhary, falsely implicated the petitioner in Bahadurpur P.S. Case No. 76 of 2001 for offence under Section 147, 148, 323, 384, 307 and 448 of the Indian Penal Code. Suddenly he was arrested and put behind the bar, whereupon, he asked his wife to handover the key of the college and six Almirrahs of the college and, accordingly, the key of the college was handed over by his wife. In the meantime, in his absence, Jawaharal Lal Chaudhary was made as Principal of the college, was discharging the duty as such. While he was under custody, in exercise of power under Rule 10(2) of the aforesaid Rule, 1965, the Chairman of the college put the petitioner under suspension vide letter dated 19.10.2001 as he remained in custody for more than forty-eight hours. After release from the jail custody, he was again put under suspension vide order dated 7.5.2002 under the provision of 10(1) of the CCS & CCA Rule, 1965 on the ground of misappropriation of fund and misuse of administrative



power. After the second suspension order, the departmental proceeding was initiated against the petitioner vide order dated 4.10.2002. The petitioner requested in his show-cause to supply the document, only then he would give proper reply. It will also be relevant to mention herein that the suspension order has stipulated that during period of suspension, he would not be allowed to enter into the college premises, that left the petitioner in most predicament situation that he could not have entered into the college premises nor documents were supplied for giving a proper reply as on account of non-supply of the document, the petitioner failed to file his explanation. The petitioner challenged the order of suspension in C.W.J.C. No. 11589 of 2002 which was disposed of vide order dated 27.7.2004.

The Assistant Registrar, L.N.M. University was made the Enquiry Officer and Jawaharlal Choudhary was made the Presenting Officer. As per the case of the petitioner, the Enquiry Officer was below the rank and the scale of the petitioner as Ravikant Jha who was holding the post of Assistant Registrar was in the scale of 2000-3500 whereas the scale of pay of the petitioner 3700-5700. In such circumstances, a person junior to the petitioner in the scale is not a proper choice for appointment of Enquiry



Officer. At best the person having higher scale to the petitioner could have been made the Enquiry Officer.

Learned counsel for the University has objected the submission of the petitioner that Ravikant Jha was not junior rather both were in a different cadre in the different pay scale and there cannot be senior and junior, when a person holding the post of Assistant Registrar has nothing to do with the Principal of the college. So the plea that has been taken by the petitioner is not sustainable.

Be that as it may, here is the question that the enquiry has been conducted ex-parte, the enquiry report was submitted by the Disciplinary Authority which is a part of Annexure-24 and found that the charges leveled against the petitioner were proved and, whereafter, the enquiry report was placed for consideration before the Managing Committee of the College and the Managing Committee gave its detailed report to the Chairman of the college but, one thing is very clear that the report was prepared by one Dhirendra Kumar Jha and Jawaharlal Chaudhary as it bears the signature of Jawaharlal Chaudhary in every page at the right hand side and the date has been given as 5.12.2003. So it is very peculiar that the Presenting Officer who had participated in the enquiry, how he could have participated in arriving to its opinion



and, that too, person who was an ex-Principal. So, naturally, it shows the natural biasness against the petitioner. In the theory of biasness, it is not required to show actual biasness but, must indicate likelihood of biasness and propensity that the person who is holding the post of Principal will not like the Ex-Principal should come and replaced from that post. This report was placed before the Chairman who passed the order whereby he dismissed the services of the petitioner. Against that, the petitioner filed an appeal dated 7.1.2004, the appeal was considered by the four men committee namely, Dr. Shashi Shekhar Narain Sinha, Mr. Ramanuj Sharma, Mr. Ramdev Rai and Mr. Jagat Lal Yadav, following has been recorded; “ Therefore, all the decisions held on 19.10.2001, 29.4.2002, 15.11.2002 and 5.12.2013 are not proper decisions by the competent managing committee. In view of this matter, actions taken against Dr. Choudhary, pursuant to meeting dated 29.4.2002 and 15.11.2002 without proper quorum is also unjustified.” In view of this recording of the fact and granting the benefit of reinstatement, the petitioner requested vide letter dated 27.2.2005 (Annexure-18) to the Chairman of the Managing Committee to allow him to join the post of Principal but, he was not allowed to do. It further appears that by that time another



Chairman took over the charge of the Managing Committee, namely, Amrendra Mishra.

The respondent in its counter affidavit in the paragraph no.23 has stipulated that the Managing Committee constituted was completely illegal and the order dated 9.12.2003 whereby declaring the dismissal of the petitioner to be illegal and, therefore, not sustainable in law but, here the matter does not come to an end. New Chairman Mr. Amrendra Mishra again constituted another Committee and placed the case of the petitioner for further consideration. At the same time, the opinion of the Senior Advocate was obtained. On perusal of the proceeding of the Committee, it appears that it has been recorded that the action of removal of the petitioner is not proper, legal and gave his own reasoning as to how it was illegal, recorded that the petitioner would be treated to be working continuously. Even then the petitioner was not appointed which prompted one of the member Dr. Sadanand Jha requested the Chairman to implement the order of the Committee whereafter three persons of the Committee, namely, Ramanuj Sharma, Dr. Sadanand Jha, Dr. Deo Narayan Yadav vide application dated 9.5.2006 (Annexure-21) brought to the notice of Education Secretary, Secondary and Higher Education wherein the details of the fact has been given and stated



that the Chairman is not working properly and proper action is required to be taken. The Deputy Secretary, Government of India asked the Vice Chancellor of Rashtirya Sanskrit Sansthan vide letter dated 23.2.2005 to provide certain information mentioned in the letter and also informed that under the Committee under leadership of Prem Narain Saxsena will examine the functioning of Rajkumari Ganesh Sharma Sanskrit Vidyapity, Kolhanta Patori, Darbhanga and other Sanskrit Vidyalaya and in pursuance of that letter, Mr. Saxena and his team examined the functioning of the college and made a recommendation wherein found that the enquiry was suffering from illegality and requires de-novo enquiry. It will be relevant to quote the recommendation of the Committee which reads as follows:-

“RECOMMENDATIONS

In consideration of all the facts and circumstances of the case, the Committee recommends that a meeting of the Managing Committee be convened following the procedure meticulously by giving sufficient notice to all the members including the representative of the State Government and the Parent Body, with an officer of the Ministry as an observer to consider the appeal of Shri Arjun Choudhary, dismissed principal under Rule 18 of the guidelines of the Scheme, in the light of this report and also take remedial action if any.



Managing Committee may also consider initiating Enquiry/disciplinary proceeding against Shri Arjun Choudhary de-novo following the provisions of the CCS (CCA) Rules in letter and spirit.

The Committee expresses its gratitude to the acting Principal Shri Jawahar Lal Choudhary, the present Chairman Shri Amerendra Mishra and Scholar Member Shri Sadanand Jha of the Managing Committee, the representative of the State Govt. on the Managing Committee Dr. Dev Narayan Yadav, representatives of the Parent Body Shri Ramanuj Sharma, Scholar Member nominated to the erstwhile Managing Committee Shri Shashi Shekhar N Sinha, and the dismissed Principal Shri Arjun Choudhary for co-operating with the team.”

Ultimately, again the appeal was dismissed by a cryptic order.

Learned counsel for the petitioner has submitted that a major penalty proceeding was initiated against the petitioner, Rule 14 prescribes the manner and method to be adopted for holding the enquiry, it requires that the charge-sheet must be attached with the statement of allegation including document which was not attached with the charge-sheet, inasmuch as, the ex-parte enquiry itself suffers from illegality reason has been mentioned that neither the prosecution witness was examined nor the documents through the witnesses were proved, procedure adopted was blatantly illegal



which has been found on three occasions by different committees that the proceeding was not done properly. Inasmuch as also the enquiry report was never served upon him is also an illegality. Further the order of appeal is cryptic order, does not give any reason, is completely illegal, also drawn attention of this Court that at every stages, it was found that the enquiry was not conducted properly, placed reliance on the judgment reported in the case of Narinder Mohan Arya Vs. United India Insurance Co. Ltd. & Ors. reported in (2006) 4 SCC 713, Roop Chandra Negi Vs. Punjab National Bank & Ors. Reported in (2009) 2 SCC 570 wherein the Hon'ble Apex Court has prescribed the manner the departmental enquiry has to be conducted.

Learned counsel for the Managing Committee has seriously argued the matter and said that all has been done fairly and properly. Dr. Ravi Kant Jha cannot be said to be junior in rank to the petitioner either in scale or rank as Dr. Ravi Kant Jha was the Assistant Registrar has its own ladder of promotion whereas the petitioner was Principal having different line. So the plea that has been taken by the petitioner is not sustainable but in the present case, the situation is very peculiar. The manner the enquiry has been conducted and the findings repeatedly been recorded at three stages, itself suggests that the every thing is not well, enquiry



was not conducted properly, that too, it does not stand to the reason when Mr. Jawahar Lal Chaudhary was a Presenting Officer, how he could be a member of decision making process and the same naturally shows propensity of biasness. On this ground also, the entire report suffers from illegality.

In that view of the matter, the entire proceeding is vitiated and the same is quashed. The Sansthan will be at liberty if so like they may serve a proper charge-sheet in terms of Rule 14, would hold an enquiry in accordance with law. If they intend to initiate a proceeding that should be completed within a period of five months from the date of receipt/production of a copy of this order. At the same time, this is also made clear that if the petitioner receives a charge-sheet, it is expected that he will cooperate in the early disposal of the case.

At the end, Mr. Yugal Kishore, learned senior advocate representing the Managing Committee submits that certain documents are still lying with the present petitioner and he should handover the same, for that, he has placed reliance on the letter (Annexure-B) reflecting that certain documents are still with the petitioner which the petitioner has seriously disputed and stated that when he was put behind the bar, he had sent all the keys through his wife to the Chairman. So this area of conflict cannot



be resolved in the present proceeding but, one thing is there. If the documents are with the petitioner, it is expected from him who was holding the post of Principal, would return the same. This Court directs the Vice Chancellor of the Sansthan to appoint higher official as an enquiry officer to conduct independent and impartial departmental enquiry.

With the aforementioned observation and direction, this writ application is allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2018
Transmission Date	NA

