

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5099 of 2020

=====

Mithilesh Prasad Son of Late Saryug Prasad, Resident of Beu, P.S.- Beur,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Chairman, Bihar School Examination Board, Patna.
3. Secretary, Bihar School Examination Board, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Manik Vedsen, Advocate
For the Respondent/s	:	Mr. Siddhartha Prasad, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 19-12-2024

This Court has heard Mr. Manik Vedsen, learned Advocate for the petitioner and Mr. Siddhartha Prasad, learned Advocate for the Bihar School Examination Board, Patna.

2. The petitioner is aggrieved with the order as contained in Memo No. 2839/2019 dated 29.06.2019, issued by the Secretary, Bihar School Examination Board (hereinafter referred to as, “BSEB”), whereby the petitioner has been dismissed from service.

3. The factual matrix of the case, as culminated from the materials available on record are enumerated hereinbelow. The petitioner was initially appointed as a Routine Clerk by the Secretary of the Bihar Intermediate Education Council, Patna on



06.12.1988. On account of merger of the Council with the Bihar Secondary School Examination Board, the petitioner became employee of the BSEB, on condition mentioned at the time of merger. Having been found eligible, the petitioner was promoted to the post of Section Officer by the letter dated 10.09.1999.

4. While the petitioner was discharging the duties of verification of mark-sheet and testimonial, in the meanwhile, on account of the charge of extorting money, in course of verification of Intermediate certificate of one *Barinder Singh*, a case has been instituted by the Central Bureau of Investigation for his fraudulent acts and cheating. The criminal case was numbered as R.C. 09 of 2012(S) CBI/Spl and finally resulted into conviction of the petitioner along with other accused persons, vide judgment dated 27.11.2014, for the offences under Section 120(B), 420, 467, 468, 471 and 201 of the Indian Penal Code. The petitioner was sentenced to undergo rigorous imprisonment of two years under all the Sections, except Section 201 of the Indian Penal Code, for which he was sentenced to rigorous imprisonment for three months and fine of Rs. 500/-. So far the other Sections are concerned, the petitioner has been imposed a fine of Rs. 1000/- under each head. The copy of the judgment of conviction and order of sentence has



been placed on record as Annexure-3 to the writ petition.

5. The petitioner on being aggrieved, preferred Criminal Appeal No. 1-S/10 of 2015, wherein, the learned Appellate Court vide its order dated 12.07.2019 has affirmed the judgment of conviction and order of sentence. Against the order aforenoted, the petitioner preferred criminal revision before the learned High Court of Himachal Pradesh through Cr. M. P. No. 1336 of 2019, wherein the learned Court after hearing the parties has been pleased to suspend the sentence affirmed by the Appellate Court vide order dated 12.07.2019.

6. In view of the conviction of the petitioner, the Deputy Secretary (Establishment), BSEB, Patna vide his Letter No. 2063/2019 dated 02.05.2019 issued show-cause notice, in terms of the Letter No. 7820 dated 28.10.2003 of the Personnel and Administrative Reforms Department. In response to the show-cause notice, the petitioner submitted his show-cause explanation on 11.05.2019, stating therein that the order of sentence has already been suspended till disposal of the case, apart from some other plea. Despite the aforesaid position, the Secretary of the Board vide Memo No. 2839/2019 dated 29.06.2019, dismissed the petitioner from service, which order is put to challenge before this Court.



7. The representation preferred by the petitioner against the impugned order of dismissal also came to be rejected by the Joint Secretary (Establishment), BSEB on 27.09.2019, which was served upon him on 15.09.2022; this order is also challenged by filing an interlocutory application bearing I.A. No. 02 of 2022.

8. Mr. Manik Vedsen, learned Advocate for the petitioner while assailing the impugned order of dismissal has made specific contention that the petitioner was appointed as Class-III employee; since the appointment of the petitioner was made by the Chairman of the Board, as per the provision contained in BSEB Act, 1952, it is the Chairman, who alone had the power of initiating departmental proceeding and dismiss Class-III employee. The order of dismissal passed by the Secretary of the BSEB, who is admittedly much below the Chairman of the Board, and not the appointing authority of the cadre of the petitioner; the order of the dismissal is in the teeth of the provisions contained in Article 311 (1) of the Constitution of India. The impugned order also gets worst, as in the case in hand, even the show-cause was issued by the Deputy Secretary (Establishment) of the Board, who had no such power, is the contention of the learned Advocate. It is further contended that



even on merit, the petitioner was framed in a false case and his conviction is based on uncorroborated evidence and erroneous finding of guilt by trial Court and upheld by Appellate Court, which order of sentence has already been suspended by the Hon'ble High Court of Himachal Pradesh and there is every chance of success in the appeal and, as such, the order of dismissal of the petitioner is in the teeth of the order of the High Court of Himachal Pradesh. Moreover, the appeal/revision is continuance of the proceeding, which has yet not been finalized.

9. Learned Advocate for the petitioner further urged before this Court that the impugned order has been passed in terms of the letter of the Personnel and Administrative Reforms, Government of Bihar No. 7820 dated 28.10.2003, which in sum and substance provides that the Government servant may be dismissed or removed or reduced in rank, without being put through departmental proceedings on the ground of conduct, which has led to his conviction on a criminal charges. However, the aforementioned circular has already been amended by the Government of Bihar vide Letter No. 3/M-162/05-(Ka) 2324 dated 10th July, 2007, which necessitates the initiation of a departmental proceeding simultaneously with the criminal proceeding before passing any order of dismissal/removal.



10. Apart from the submissions aforenoted, learned Advocate for the petitioner lastly contended that the respondents miserably failed to justify delay of five years, inasmuch as, the conviction order was passed on 27.11.2014, which order was duly communicated to the BSEB, but the respondents did not consider expedient to take any action for about 3-4 years and on this ground also, passing of dismissal order is not sustainable. To fortify the aforesaid contention, learned Advocate for the petitioner has placed the copy of the Bihar School Examination Board Regulations 1964. Referring to Chapter-X, especially Rule 52 thereof, he further submits that there is specific prescriptions, which stipulates that the Chairman is the punishing authority for all ministerial staff and the Secretary is the punishing authority for all Class-IV employees. A punishment can be imposed only by the prescribed punishing authority and any deviation from the settled proposition would render the impugned order void.

11. To controvert the submissions aforenoted, Mr. Siddhartha Prasad, learned Advocate for the BSEB has submitted that so far the impugned order of dismissal passed by the Secretary of the BSEB is concerned, the same was made with the prior approval of the Chairman of the Board. Attention



of this Court is drawn to Regulation 1 (e) of Chapter-VII of the Bihar School Examination Board Regulations, 1964, which says that subject to the approval of the Chairman, the Secretary is empowered to appoint, dismiss, fine, promote, demote, suspend, discharge, and take necessary action to maintain the strength, discipline, efficiency, and morale of the Board's office with respect to all staff members, except the Officers of the Board. He would thus contended that prior to the order of dismissal, the approval of the Chairman was duly taken on 24.06.2019, as is evident from the relevant extract of the concerned file of the Board; the record has been produced pursuant to the direction of this Court.

12. With reference to the submission causing delay in passing the punishment order, he has reiterated the factual chronology of the case, right from the institution of the criminal case to inflicting the impugned order of punishment. It is the contention of the learned Advocate for the BSEB that on receipt of the information from the Central Bureau of Investigation vide Letter No. 276 dated 30.01.2014, regarding the pendency of a criminal case before the CBI Court, Shimla against the petitioner and others, the BSEB immediately issued a show-cause notice to the petitioner on 11.03.2014. By the order of the



Chairman; Enquiry Officer and the Presenting Officer were appointed. After proper enquiry, the Enquiry Officer submitted his enquiry report that since criminal case is pending before the learned trial Court, therefore, it would not be appropriate to make enquiry into this matter. Subsequently, on 05.08.2016, the Head of the Branch, CBI, Shimla informed the BSEB regarding the petitioner's conviction in the aforementioned case. In the light of the above information, explanation was sought for from the petitioner as to why he should not be dismissed from service, on account of his conviction by CBI Court. The petitioner submitted his response, which was duly considered in the light of proviso (a) to Article 311 (2) of the Constitution of India and consequently, with the Chairman's approval, the Secretary of the BSEB vide office order bearing Memo No. 2839/2019 dated 29.06.2019, dismissed the petitioner from his services.

13. Mr. Prasad, learned Advocate for the BSEB further contended that in a case, where a government servant was an employee, is convicted on a criminal charge of corruption, the employer has right to dismiss the employee, in terms of the proviso (a) to Article 311 (2) of the Constitution of India. The conduct of an employee, which led to conviction on a criminal charge is sufficient to take such action. Moreover,



before the impugned order, show-cause was duly asked and reply thereof was filed by him stating therein that on account of suspension of sentence, he should be allowed to continue in the service, till the disposal of the revision application, which is pending before the Hon'ble High Court. However, the request of the petitioner did not accede to, as the order of dismissal, removal or reduction to a rank of a government servant, who has been convicted by a criminal court, is not barred merely because the sentence or order suspended by the Appellate Court or on the ground, the said government servant/accused has been released on bail, pending the appeal.

14. Reliance has also been placed on a decision of the learned Division Bench of this Court in the case of ***Shio Bihari Rai Vs. The State of Bihar and Anr.*** in ***LPA No. 1111 of 2000***, wherein, the Court held that Article 311 of the Constitution grants protection to a Government employee from dismissal. The said Article, however, makes it abundantly clear that such protection is not applicable, in case, the order of dismissal is based on conviction. Mr. Prasad, lastly contended that even if the impugned order takes note of the Circular/Letter of the Personnel & Administration Reforms Department dated 28.10.2003, which was later on modified or amended by the



subsequent letter dated 10.07.2007, but the same is only in the nature of guideline and cannot oust the power of the government and its instrumentality, as provided under proviso (a) of Article 311 (2) of the Constitution of India.

15. This Court has anxiously heard the learned Advocate for the respective parties and also meticulously perused the materials available on record and also went through the relevant extract of the file placed before this Court.

16. The question for consideration, as has been culled out from the submissions/pleadings of this case is as to whether the petitioner can be inflicted with the punishment of dismissal without there being any departmental enquiry/proceeding and/or whether the order of punishment inflicted by the Secretary of the BSEB is legal and valid, in terms of the relevant prescription, as provided under Chapter-X of the BSEB Regulation, 1964. One another question has also been posed for consideration, as to whether during the pendency of the appeal or revision, which is in continuance of the trial should the disciplinary authority not await for the final outcome of the appeal/revision and/or, the impugned order is not vitiated with the delay in passing the impugned order of punishment.

17. So far the contention of the petitioner with regard



to the power of the Secretary of the BSEB in inflicting the punishment to Class-III employees is concerned, the same is obviously not permissible in terms of Rule 52 of the Regulation 1964, as it is the Chairman, who is the competent authority to inflict the punishment. However, the Regulation 1(e) of Chapter-VII of the Regulation, 1964 empowers the Secretary, subject to approval of the Chairman to appoint, dismiss, fine, promote, demote, suspend, discharge, and take necessary action to maintain the strength, discipline, efficiency and morale of the Board's office with respect to all staff members, except the Officers of the Board.

18. On going through the notings of the file and the relevant extract thereof, this Court is of the opinion that before inflicting the order of dismissal, the approval of the Chairman was duly asked for and the same was also accorded. Thus, in view thereof, this point of the learned Advocate for the petitioner answered in negative.

19. So far the issue with regard to the power of the disciplinary authority to inflict the punishment of dismissal, removal or reduction in rank, in view of conviction by a criminal Court, it would be worth benefiting to quote Article 311 (2)(a), hereunder:-

“6. Article 311(2) declares that no



person, who is a member of the civil service of the Union or All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The second proviso, however, carves out three exceptions to the said rule. We are concerned with the first exception mentioned under clause (a). Insofar as it is relevant, the second proviso reads as follows:

“Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.”

20. Bare reading of the aforementioned provision, there would not be any uncertainty that in any event, where the government servant is sought to be inflicted punishment of dismissal/removal or reduction in rank, an enquiry after informing the charges against him and giving him a reasonable opportunity of being heard in respect of each of the charges is sine qua non. However, the proviso (a) to Article 311 (2) clearly envisages that such enquiry after framing of charge and giving a reasonable opportunity of being heard would not be necessary, where a person is dismissed or removed or reduced in rank on the ground of misconduct, which has led to his conviction on a criminal charge.

21. The identical issue has come up for consideration



before the learned co-ordinate Bench of this Court in the case of ***Suryadeo Singh Vs. The State of Bihar & Ors.*** and other analogous cases, ***(2011) 1 PLJR 28***, wherein, the learned Court having taken note of the proviso (a) to Article 311 (2) of the Constitution of India as also the prescriptions of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, posed a question as to whether a case where government servant is removed from service on the ground of conviction by a Court of law in a criminal case, there is no requirement of a regular departmental enquiry or at least necessary to issue notice and/or afford an opportunity of hearing to the concerned person that there is a tentative decision to inflict him with such punishment. The learned Court has aptly answered the question in paragraph nos. 17, 19 and 20, which are reproduced, hereinbelow:-

“17. It is true that under proviso to Article 311(2) of the Constitution of India, it has been envisaged that such inquiry after framing of charges and giving a reasonable opportunity of being heard in respect of those charges would not be necessary where a person is dismissed or removed or reduced in rank on a ground of the conduct which has led to his conviction of a criminal charge. However, there is nothing in Article 311 of the Constitution of India which says that even notice is not required to be given to such a persons who is sought to be dismissed or removed or reduced in rank on the ground of his conviction of a criminal charge. In the



considered opinion of this Court, proviso (a) to Article 311(2) of the Constitution of India only suggests that the requirement of a regular departmental enquiry which begins with the framing of charge, continues with the leading of evidence by way of giving opportunity of hearing and concluding it by an appropriate order of punishment is not required to be gone into in the cases in which government servants are removed from service on the ground of conviction by a court of law in a criminal case. It therefore appears to this Court that as a matter of fact even when the procedure of a regular departmental proceeding would not be required to be followed in case of dismissal, removal or reduction in rank on the ground of conviction in a criminal cases, even in those cases it would be absolutely necessary to issue notice and/or afford an opportunity of hearing to the concerned person that there is a tentative decision to inflict him with such punishment of dismissal, removal or reduction in rank because his conduct on the basis of the specific criminal charge which led to his conviction did not render him fit to continue in the Government service or the post which he was holding prior to his conviction.

19. It is not in doubt that removal from service under rule 14 is a major penalty under Rule 14(IX). If in this context, the exhaustive provision under rule 17 laying down the procedure for imposing major penalty is taken into consideration, it would be absolutely clear that only such procedure for imposition of penalties was not to be followed in the case of a Government servant who had been convicted on a criminal charge. Rule 20 of the Rules infact lays down that notwithstanding anything contained in rule 17 to 19 where any penalty is imposed on a government servant on the ground of conduct which had led to his conviction on a criminal charge, the disciplinary authority



may consider the circumstances of the case and make such order thereon as it deems fit.

20. The second proviso to rule 20 infact answers the question in hand where it has been said that the government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under rule 20(i) of the Rules. Thus, from the reading of rule 20(i) of the Rules and its second proviso, it is absolutely clear that even in cases where penalty is to be imposed, either major or minor in terms of rule 14, the government servant is required to be given an opportunity of making a representation on the penalty proposed to be imposed before an order is made on the ground of conviction on a criminal charge.”

22. The aforesaid judgment has further been reiterated by this Court in the case of ***Subrata Basu Vs. The State of Bihar and Ors., (2013) 3 PLJR 608***, wherein, while reiterating the aforesaid proposition of law, has also held that a government servant in terms of Rule 3 of the Bihar Government Service Conduct Rules is required to maintain absolute integrity, devotion to duty and to do nothing which is unbecoming of a government servant. This aspect of the matter was also considered by the learned Full Bench of this Court in the case of ***Sarju Prasad Singh v. State of Bihar, 1987 PLJR 285***, wherein, the learned Court held that a government servant having been convicted by a court of competent jurisdiction for criminal charge of murder can be said to have committed for an



offence involving moral turpitude and thus his such conduct being in violation of Rule-3 of the Bihar Government Service Conduct Rules.

23. In the case in hand, the petitioner was charged with manipulation of record and extracting money during verification of mark-sheets, which was proved in a criminal trial and duly affirmed by the Appellate Court. From the record it transpired that show-cause notice was served upon the petitioner and in response thereto, the petitioner has submitted his reply, which was duly considered by the competent authority and later on, after obtaining the approval of the Chairman, as required in terms of the Regulation, 1964, the impugned order of dismissal came to be passed.

24. So far the plea taken by the petitioner with regard to the suspension of the sentence and the pendency of the revision application against the order of the Appellate Court, it is well settled that suspension of sentence or release on bail by the appellate Court does not render the provision of proviso (a) Article 311 (2) inoperative. The Hon'ble Supreme Court in the case of *Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera*, reported in *(1995) 3 SCC 377* in no uncertain term held that clause (a) to



Article 311(2) of the Constitution of India speaks of conduct, which has led to his conviction on a criminal charge. It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the Code of Criminal Procedure, 1973, although empowers the Appellate Court to suspend the sentence or the order appealed against or to release the accused on bail and does not expressly speak of suspension of conviction; though in certain situations, the appellate Court may also have the power to suspend the conviction. This Court deems it apt to encapsulate relevant paragraphs for appreciation of the issue framed herein;

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which



he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in Shankar Dass v. Union of India [(1985) 2 SCC 358 : 1985 SCC (L&S) 444 : 1986 SCC (Cri) 242] : (SCC p. 362, para 7)

“Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service ‘on the ground of conduct which has led to his conviction on a criminal charge’. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of



conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly.”

25. Similar view was again reiterated by the Hon’ble Apex Court in the case of ***State of Tamil Nadu & Ors. Vs. K. Guruswamy, (1996) 7 SCC 114***. Further the Hon’ble Apex Court in the case of ***Union of India & Ors. Vs. Ramesh Kumar, (1997) 7 SCC 514***, while upholding the order of dismissal from a convicted employee has observed that if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence.

26. In the light of the settled legal position and the aforementioned discussion, this Court has no hesitation to hold that neither the order of dismissal from service of the petitioner nor the pendency of the revision could have stood in the way of the charges in dismissing the petitioner from service, once the petitioner has been served with the show-cause notice and his reply was duly considered, as discussed hereinabove.

27. So far the last issue based upon the contention of the learned Advocate for the petitioner that the impugned order passed in terms of the circular/letter dated 28.10.2003,



nonetheless it stood modified by the government on 10th July, 2007 itself, prescribing the requirement of the departmental proceeding, after framing of the charge in case of conviction and thus, the order suffers from non-application of mind, does not find force, as the letter/circular has no statutory force and it only prescribes a guidelines to be followed.

28. Well settled it is that no letter or any circular would have even the semblance of a valid decision, if in any circumstances, it causes eclipse to the statutory provision of the Rules/Act and the solemn prescriptions of the Constitution; once proviso (a) to Article 311 (2) of the Constitution of India makes it explicitly clear that the protection of Article 311 (2) would not be applicable in case of dismissal, removal or reduction in rank of a government servant on account of conviction by a criminal Court. Moreover, the letter of 10.07.2007 does not speak of any consequences that in case of non-compliance of such decision, it shall make the impugned order of punishment invalid or inoperative.

29. This Court is also satisfied with the chronological facts that there is no delay and laches on the part of the respondent authorities in inflicting the order of punishment of dismissal, since the order of conviction dated 27.11.2014 has



been affirmed by the Appellate Court on 12.07.2019 and during the interregnum period, the petitioner has been offered show-cause and appropriate opportunity to be heard before passing the impugned order of dismissal.

30. In view of the aforesaid settled legal position and the discussion made hereinabove, this Court does not find any merit in the writ petition and accordingly, the same stands dismissed. The question/issue answered accordingly.

31. The original record submitted for perusal of this Court is hereby directed to hand over to the learned Advocate for the Bihar School Examination Board.

32. There shall be no order as to cost.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	11.11.2024
Uploading Date	25.12.2024
Transmission Date	NA

