SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Brij Mohan and anr. Vs. Bihar State Electricity Board and ors.

Brij Mohan and anr. Vs. Bihar State Electricity Board and ors.

SooperKanoon Citation : sooperkanoon.com/121538

Court : Patna

Decided On : Dec-19-1997

Judge : Ashok Kumar Ganguly, J.

Appeal No. : C.W.J.C. No. 5569 of 1996

Appellant : Brij Mohan and anr.

Respondent : Bihar State Electricity Board and ors.

Disposition : Petition Allowed

Prior history : Ashok Kumar Ganguly, J. 1. The question which has fallen for determination in this case is whether or not the respondent Bihar State Electricity Board (hereinafter called the said Board) is entitled in the facts of this case to initiate an enquiry on the self same charges on which previously an enquiry was held and the Enquiry Officer exonerated the petitioners. Thereupon the disciplinary authority accepted the findings and also exonerated the petitioners and gave effect to the said findings o

Judgement :

Ashok Kumar Ganguly, J.

1. The question which has fallen for determination in this case is whether or not the respondent Bihar State Electricity Board (hereinafter called the said Board) is

entitled in the facts of this case to initiate an enquiry on the self same charges on which previously an enquiry was held and the Enquiry Officer exonerated the petitioners. Thereupon the disciplinary authority accepted the findings and also exonerated the petitioners and gave effect to the said findings of exoneration by promoting the petitioner No. 1 and also by allowing the petitioner No. 2 to retire.

2. It is common ground that in the matter of holding enquiry, the Board is guided by the Rules which govern the disciplinary proceeding against the Government servant of the State of Bihar, namely, Civil Services (Classification, Control and Appeal) Rules, 1930 and under the said Rules there is no power of review.

3. The aforesaid question arises in facts and circumstances of the case which are narrated hereinafter.

4. At the material time petitioner No. 1 was working as an Administrative Officer and petitioner No. 2 was working as Issue Superintendent under the said Board. The said Board wanted to hold a competitive examination for the recruitment of Electrical Assistant/Executive Engineer. Such examination was scheduled to be held at two centres, one at Patna College and another at St. Michael School. In respect of the said examination held on 7.10.1990 both the petitioners were deputed in Room No. 12 at Patna College Centre as Invigilators. The petitioner's case is that when they went to room No. 12, they found that as per the sitting arrangements displayed at the main gate the names and roll numbers of the candidates were posted at the door and according to the sitting arrangements copies and question papers were to be distributed. A computerised attendance sheet of the candidates of each room was made available to the petitioners for more than half an hour after the commencement of the examination. Then the petitioners took the attendance of the candidates in accordance with the said computerised attendance sheets and it could be detected that seven candidates whose names and roll numbers were not mentioned in the computerised sheets were also sitting and taking examination in room No. 12. The petitioners asserted that the said fact was brought to the notice of the Secretary of the Board and other authorities and on their oral instruction on the spot, the attendance of those seven candidates were taken on a separate loose sheet.

5. This fact, however, has been denied in the counter affidavit filed on behalf of the said Board. However, the petitioners' case is that the examination was conducted peacefully. Thereafter the petitioners received a notice dated 17.12.1990 issued by the Secretary of the Board by which the petitioners were asked to explain why a disciplinary action should not be taken against them for allowing those seven candidates to appear in the said test from Room No. 12.

6. Pursuant to that notice the petitioners gave explanation and in the said explanation also the petitioners stated that as soon as the matter was detected by them, the petitioners questioned the candidates as to how they can sit in the room and the candidates stated that they were asked to do so on the basis of the roll number shown in the room and then the petitioners brought this fact to the attention of the Secretary and the Secretary instructed the petitioners to take the attendance of those persons separately on a sheet of paper.

7. In the show cause the petitioners also stated that such examination was called for, from the petitioners two months after the holding of the said examination and after they gave the said explanation almost after a lapse of about one year, a chargesheet was served upon both the petitioners. Then an enquiry followed and in the said enquiry three witnesses appeared on behalf of the department. They were Chief Engineer, S & P. Bihar of the said Board who at the relevant point of time worked as Controller of Examination. The other two witnesses were the Director Personnel who worked as Additional Centre Superintendent in the said written test and also the Joint Secretary of the Board who worked as Centre Superintendent in the said written test.

8. In the report submitted in the said enquiry by the Electrical Superintending Engineer (Research) of the said Board who was the Enquiry Officer, the explanation of the petitioners was submitted and the Enquiry Officer exonerated the petitioners by holding that the charges against the petitioners should be dropped. On the basis of the said enquiry report orders were passed by the Joint Secretary of the said Board that both the petitioners be exonerated of all the charges levelled against them.

9. Thereafter by an order dated 23.12.1992 petitioner No. 1 was promoted to the Selection Grade Post of Administrative Officer with effect from 1.6.1991 and the petitioner No. 1 was again promoted by order dated 31.3.1993 to the post of Under Secretary of the said Board with effect from 14.10.1992. Petitioner No. 2 was allowed to retire from the services of the Board after the said exoneration.

10. It appears that those seven persons who sat in room No. 12 were disqualified for appointment as Assistant Executive Engineer in view of the fact that they had violated the Rules and instructions laid down for the conduct of the examination. Several writ petitions were filed by those seven persons which came up for hearing before a learned Judge of this Court and all the petitions filed by those disqualified candidates were taken up together and the writ petitions were dismissed, inter alia, on the ground that those seven

persons were rightly disqualified from consideration. The said judgment was dated 5.4.1993.

11. While delivering the said judgment the learned Judge took notice of the fact that a disciplinary proceeding was initiated against the Invigilators and His Lordship made observations to the effect that from the fact that such a proceedings was initiated against the Invigilators shows that the Board acted bona fide. The learned Judge also made observation that it appears that the Invigilators have acted in collusion with those disqualified candidates and as such the fact that no malpractice has been reported against those persons is of no consequence. In coming to the said decision, the learned Judge also took into consideration the fact that holding of fair examination has become very difficult in the State and since the problem has become very disturbing the learned Judge held that such problem cannot be lightly viewed and no fault can be found with the authorities of the said Board.

12. However, in the aforesaid judgment delivered by the learned Single Judge His Lordship observed that 'there are good reasons to suspect that there was something common between the petitioners and the Invigilators deputed in that room.'

13. From a perusal of the judgment delivered by the learned Single Judge it is clear that His Lordship was aware that a departmental proceeding was initiated against the petitioners but His Lordship was not possibly aware of the fact that by the time the judgment was delivered on 5.4.1993, the departmental proceeding had come to an end and the petitioners herein were exonerated from the said charge in the departmental proceeding both by the Enquiry Officer and the Disciplinary authority.

14. It may be stated that the petitioners were not parties to the said proceeding before this Court nor at any stage any notice was served on them either by the said Board or by the petitioners in those cases.

15. However, on a Special Leave Petition being filed against the judgment of the learned Single Judge, the Supreme Court also dismissed the Special Leave Petition by an order dated 12.8.1996 by observing that the Supreme Court has no reason to differ from the view taken by the High Court. Prior to the said order of dismissal of the Special Leave Petition the Hon'ble Supreme Court at the intermediate stage passed certain orders. First of such order as has been disclosed by the learned Counsel for the respondent Board, was passed on 7.12.1995 which runs as follows:

The matters be adjourned for two months to enable the Bihar State Electricity Board to complete the enquiry against the invigilators and place a copy of the report on he file.

16. After the said order, the matter was again placed before the Hon'ble Supreme Court on 12.8.1996 and the following order was passed:

The Enquiry Report has indicted the invigilators. The original ground of the petitioners that if the invigilators are cleared of the charge, they would derive benefit therefor is no longer available. We have no reason to differ from the view taken by the High Court. Special Leave Petitions are dismissed.

17. It appears from the tenor of the aforesaid orders that the Supreme Court was willing to be informed about the outcome of the enquiry. Ultimately it appears from

the order dated 12.8.1996 by which the aforesaid Special Leave Petition was 'dismissed that the enquiry report was placed before the Hon'ble Supreme Court and the Hon'ble Supreme Court did take notice of the fact that the enquiry report has indicted the petitioners and as such the ground which has been urged by the disqualified candidates before the Supreme Court that the Invigilators have been cleared off the charges was no longer available to those disqualified candidates and the Special Leave Petition was dismissed.

18. Relying on the aforesaid observations of the learned Single Judge of this Court as also the observation of the Hon'ble Judges of the Supreme Court, learned Counsel for the respondent Board submitted that the Supreme Court did not hold that the aforesaid enquiry was not permissible in the eye of law and since the Supreme Court has taken the enquiry report into some consideration for dismissal of the Special Leave Petition, the said enquiry cannot be quashed by this Court.

One thing is clear from the order of the learned Single Judge of this Court and also from the order of the Hon'ble Supreme Court that the question which has fallen for consideration before this Court was certainly not an issue either before the High Court or the Supreme Court even remotely. It does not appear either from the order of the learned Single Judge of this Court or the order of the Hon'ble Supreme Court that they were made aware of the full facts of the case to the extent that the enquiry proceeding held against the petitioners ultimately resulted in their exoneration and on the basis of such exoneration the benefit of promotion has been granted to petitioner No. 1 and petitioner No.2 has been allowed to superannuate. As such those observations of the Supreme Court are not in he nature of any binding precedent on this Court nor can they be treated even as an obiter dicta.

19. An obiter dicta must be distinguished from a casual observation made in a judgment. First of all the Apex Court did not deliver any judgment in the sense it did not decide any issue while dismissing the S.L.P. by its order dated 12.8.1996.

20. In Mohan Das Issar Das v. A.N. Sattanathan reported in 1956 BLR page 1156, it was held by a Bench of very eminent Judges (Chief Justice M.C. Chagla and Justice Shah) that obiter dictum is an expression of opinion on a point which is not

necessary for the decision of the case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the tribunal.' (p. 1160 of the report).

The learned Judges further held that from the 'dicta one must be in a position to deduce a rule laid down by higher authority' (p. 1161 of the report).

21. No rule can obviously be deduced from the mere casual observations in the order dated 12.8.1996, dismissing the special Leave Petition. Therefore, the doctrine of obiter dicta cannot be pressed into service here.

22. Learned Counsel for the petitioners contended and to my mind, rightly that as the petitioners are not parties to those cases their rights which have accrued to them as a result of the exoneration in the previous disciplinary proceeding cannot be taken away on the basis of some observations on a non issue either by the learned Single Judge of this Court or by the Hon'ble Supreme Court.

23. It is well settled that when Supreme Court dismisses a Special Leave Petition without laying down any law, the same does not have the binding effect of a judgment under Article 141 of the Constitution as it has none in the instant case. Here the Supreme Court did not lay down any law while dismissing the Special Leave Petition by its order dated 12.8.1996.

24. The Constitution Bench of Supreme Court in Bachhitar Singh v. The State of Punjab reported in AIR 1963 SC page 395, held that both stages of disciplinary enquiry against a Government servant are judicial in nature (para 7). The same principle applies to the employees of the said Board. So the precise question is whether an authority while exercising judicial function in dealing with disciplinary proceedings against the petitioners, in the absence, can review an order which has been acted upon by the said authority and has become final.

25. Before I deal with the legal implication of this question, this Court considers the reasons disclosed by the Board in its attempt to initiate the inquiry afresh against the petitioners. The said order of the Board is at Annexure 12 at page 78 of the

writ petition. In the said order in he recital portions the respondents authorities have criticised the order of the enquiry authority in various paragraphs and by way of reason for starting the enquiry afresh have referred to the High Court judgment but have not referred to the observation of the Hon'ble Supreme Court at all. While referring to the High Court judgment, the authorities of the Board have stated that since the High Court has dismissed the writ petition filed by the disqualified candidates on the ground that those candidates acted in connivance with the petitioners, the enquiry is started once again and in the operative portion of the order it has been said as follows:

After due consideration of the entire matter, it is ordered that:

(i) The charges levelled against the proceedees vide Board's Resolution No. 1215 and 1217 both dated 23.12.91 be re-enquired in consideration of various aspects as outlined above by the Enquiring Officer Shri P.R. Sharma, Elecl. Superintending Engineer, Muzaffarpur Elecl. Circle, Muzaffarpur. He will submit his report within 2 months from the date of issue of this resolution.

(ii) Board's resolution No. 886 dated 15.12.92 and Resolution No. 888 dated 15.12.92 exonerating Sri Brij Mohan Prasad, the then Administrative Officer (now Under Secretary) and shri Ratneshwar Prasad, the then Superintendent (Issue) now superannuated, Bihar State Electricity Board, Patna from the charges are withdrawn.

(iii) A Signed copy of this resolution be forwarded to Sri Braj Mohan Prasad, the then Administrative Officer now Under Secretary, Bihar State Electricity Board, Patna and Shri Ratneshwar Prasad, the then Superintendent (Issue) since superannuated, Bihar State Electricity Board, Patna now residing at Mohalla Mohanpur Punaichak, P.O. L.B. Shastri Nagar, Patna.

(iv) The original case records relating to Deptt. proceeding against Sarvashri Braj Mohan Prasad, the then Administrative Officer now Under Secretary, Bihar State Electricity Board, Patna and Shri Ratneshwar Prasad the then Superintendent (Issue) since superannuated, Bihar State Electricity Board, Patna now residing at Mohanpur Punaichak, P.O. Lal Bahadur Shastri Nagar, Patna be forwarded to Shri

P.R. Sharma, Enquiring Officer.

26. It will appear from the said operative portion of the order dated 3.1.1994 that [no new charge was framed against the petitioners. The charges which were previously enquired into and in respect of which he petitioners have been exonerated, the same charges are sought to be re-enquired into. The charges which have been levelled against the petitioners in respect of which the petitioners have been exonerated are set out below:

They (Sri B.M. Prasad, Admn. Officer and Sri Ratneshwar Prasad, Issue Superintendent) allowed the following seven candidates to sit in Room No. 12 and take their examination although as per the sitting arrangements these roll numbers were allotted sitting arrangements in different rooms. In the room No. 12 candidates from Roll No. 3072 to 3112 only were to be allowed to sit but the following roll numbers were also allowed in the said room in total disregard to all norms with ulterior motive. These Roll Nos. are 1820, 1875, 2297, 2667, 2214, 2284 and 2116.

Charge No. 2.

The invigilators the particular room was supplied with he computerised attendance sheet showing Room No., Roll number and name of the candidate against which the individual candidate was required to put his signature in token of the proof that be appeared in the test. The invigilators were also required to put the signature on the attendance sheet but the two charged officers, named above did not put their signature with ulterior motive.

Charge No. 3.

Sri B.M. Prasad, Shri Ratneshwar Prasad were called for explanation in Board's letter No. 161/St. dated 17.12.1990 as to why they did not seek instructions from the Superintendent of the centre before allowing the seven candidates to sit in room No. 12 to which they replied that they did so under the instructions from the Secretary, which is not supported by any written order. In terms of the instruction issued to them they should have sought instructions from the Centre

Superintendent in case of any difficulty or doubt but they did not follow the instructions which amounts to dereliction of duty.

Charge No. 4.

As per sitting arrangement the Roll No. 3079 was to sit in Room No. 12 of which the aforesaid Officer were invigilators but in the computerised attendance sheet earmarked for the said room the candidate has been marked absent whereas on a separates loose paper his attendance has been taken to show that he was present in the said room. It amounts to gross negligence of duty on their part.

27. It does not appear from the charges aforesaid that there was any allegation of connivance.

28. Therefore, again when the respondents authorities decided to re-enquire the said charges, even then they have not charged the petitioners with connivance. Therefore, it is not a separate charge of a different charge which was decided to be enquired into subsequently but it was the same charge.

29. In the background of this case, the questions which have been framed in the earlier paragraphs of this judgment may be answered first. It is well settled that a disciplinary proceeding against a delinquent employee is a judicial proceeding. Now in a judicial proceeding, the rights of the parties are decided on the basis of statutory provision. In the instant case the statutory provision as referred to is the Civil Services (Classification, Control and Appeal) Rules, 1930 which does not provide for any review. Learned Counsel for the respondent Board has fairly submitted that there is no legal sanction. for initiating a review but the impugned order for re starting the proceeding unmistakably will show that the same has been initiated by way of review and reconsideration of the Enquiry Officer's report by the same disciplinary authority which previously accepted it. Therefore, on general principle he question which crops up is whether the power to review an order made by an adjutdicatory authority earlier in exercise of statutory power is an inherent power of such authority. The question has been answered in the negative by the supreme Court in Patel Narshi Thackershi v. Praduman Singhji Arjun Singhji, reported in : AIR 1970 SC1273 . Justice Hegde, as His Lordship then was,

stated the principle thus in paragraph 4 of the report.

It must be remembered that Mr. Mankodi was functioning as the delegate of he State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

This principle has been subsequently followed in many cases.

30. Reliance in this connection can also be had to the decision of the Privy Council in R.T. Rangachari v. Secretary of the State, reported in AIR 1937 PC page 27, where the learned Judges of the Privy Council were pleased to hold that in a case in which after the Government officials duly authorised in that behalf have arrived honestly upon a decision and the said decision has been acted upon and id in active operation, their successor-in-office cannot enter upon a re-consideration of the matter and to arrive at another, a totally different decision, Here it is not in dispute that the decision of exoneration taken by the disciplinary authority was acted upon and was in active operation when an attempt was made for a total re-consideration of the earlier decision. Such a course of action has been prohibition in view of the ratio of the judgment of the Privy Council in R.T. Rangachari (Supra).

31. Learned Counsel for the petitioners has, however, relied on a judgment which has a very close bearing on the point at issue. The said judgment is in the case of State of Assam and Ors. v. J.N. Roy Biswas, reported in : (1976)IILLJ17SC . In the said case an enquiry which was previously closed with a finding of exoneration was said to be re-opened against the employee concerned. Considering the facts and circumstances of the case, the Supreme Court observed as follows:

But having been exculpated after enquiry, the State could go at him by re-opening the proceedings only if the rules vested some such revisory power. None such has

been shown to exist although one wonders why a rule vesting such a residuary power of a supervisory nature to be exercised in the event of a subordinate disciplinary authority not having handled a delinquent adequately or rightly is brought to the attention of Government has not been made.

32. From the aforesaid observation, it is clear that the Hon'ble Supreme Court did not allow such enquiry in absence of a rule authorising it. In paragraph 4 of the said judgment the Supreme Court has further observed that it cannot be said that in no case, if for some technical reason or good ground procedural or otherwise, the first enquiry or punishment is found bad in law, the second enquiry cannot be launched. It may be launched but the supreme Court also made it clear that once a disciplinary proceeding has been closed and the official reinstated on exoneration, the Government cannot restart the exercise in absence of specific power to review or revise vested by the rules in some authority. This according to the Supreme Court, is one of the basics of the rules of law and this cannot be breached without the legal provision or any vitiating factor invalidating the earlier enquiry.

33. By vitiating factor this Court would consider some fraud or deception or mal-practice on the part of the authorities in the holding of the enquiry or some kind of forgery on the part of the delinquent employee. In the absence of these factors, merely by entertaining a second view or an alternative view, a second enquiry cannot be started on the same charges. This Court, therefore, holds that the ratio in the aforesaid case of State of Assam (supra) has a very close bearing to the facts of this case. The principle decided in the said case in the State of Assam (supra) has also been subsequently affirmed by the Supreme Court in R.R. Verma and Ors. v. Union of India and Ors. reported in : (1980)IILLJ152SC . In paragraph 5 of the said judgment, he learned Judges of the Supreme Court in R.R. Verma (supra) while affirming the principle enunciated in State of Assam (supra) stated that in case of decisions of purely administrative nature, the aforesaid principle emanating from the case which involves exercise of quasi judicial function would not apply. Therefore, in the case of R.R. Verma (supra), the Supreme Court has made a conscious distinction and which, in my opinion, is a very relevant one between the exercise of power in passing an administrative order and in the

exercise of function which is judicial in nature. In an administrative matter the admissibility of a review cannot be ruled out but the same is not true in case of exercise of power while discharging judicial function. To the same effect also is the judgment of the Supreme Court in the case of Prafulla Chandra Mahapatra v. State of Orissa, reported in : (1993)ILLJ171SC . In that case the Supreme Court has made it very clear that when a disciplinary proceeding initiated against an employee was not continued in view or criminal case started against him and then there was an acquittal in the criminal case and the enquiry proceeding was virtually dropped and the employee was reinstated and subsequently retired from office on attaining the age of superannuation, in such a case it was not proper for the Government to start a fresh disciplinary proceeding 'on the basis of any observation recorded by the High Court in a case relating to a co-accused.

34. Here the respondents are precisely trying to do the same thing. The disqualified candidates may not be co-accused of the petitioners but in a proceeding initiated by them there are some observations and it is precisely being influenced by those observation the disciplinary proceeding was restarted against the petitioners. In the instant case the petitioners are on stronger grounds inasmuch as here the disciplinary proceeding was not dropped but was concluded with a finding of exoneration. Therefore, on the ratio of the judgment in Prafulla Chandra Mahapatra (supra), the attempt to re-start the disciplinary proceeding against the petitioners cannot be permitted.

35. The matter can be looked at from another angle also. It has been held by the Supreme Court in jai Singhani's case reported in : [1967]65ITR34(SC) the predictability is the very essence of the Rule of law. A citizen must know where does he stand and it is this predictability in executive function which ensures the absence of arbitrariness.

36. In the instant case on the facts disclosed once the petitioners are allowed to be exonerated and the same exoneration is acted upon by giving promotion to petitioner No. 1 and allowing petitioner No. 2 to superannuate, this state of affair cannot be reversed or upset by re-starting the disciplinary proceeding when there is no legal sanction for doing so just but by taking a different view of the Enquiry

Officer's report. If the Court permits the administrative authority to indulge in such tinkering with the finality achieved in a proceeding which is judicial in nature, that would mean promoting uncertainty and may be flippancy in administration and these are the known enemies of the principles of Rules of law. Principles of public interest which are an inbuilt content of Rule of law are envisaged to promote certainty and consistency in the action of administrative authorities.

37. Learned Counsel for the parties have relied on certain judgments relating to quantum of punishment and on the principles of promotion granted to petitioner No. 1 whether it is based on the principles of seniority-cum-merit or merit-cum-seniority. But having regard to the view which this Court has taken, those questions are redundant inasmuch as the Court takes the view that re-starting of the enquiry itself is bad. Therefore, the punishment which has been imposed, whether the said punishment is excessive or not, is outside the Court's consideration.

38. One decision has been cited by the learned Counsel for the respondent Board which has some relevance to the question. The same was delivered in the case of Janardan Dubey v. State of Bihar and Ors. reported in : (1996)8SCC461 . In that decision the learned Judges of the Supreme Court held that the Government has certainly the power to review its order but such review must be for good reasons. But in the said case the power which was exercised by the Government was an administrative power. The facts are as follows:

There was initially an order of the Government dropping the charges against one Janardan Dubey and cancellation of the Government's decision for instituting a criminal case. It does not appear from he facts disclosed in the said case that there was any full fledged enquiry culminating in the exoneration of the delinquent. When the said order was reviewed subsequently the Supreme Court did not permit the same holding that the order of review does not disclose any reason. But in the instant case the exercise of power is judicial in nature as pointed out hereinabove. Therefore, the factual matrix is totally different. In the changed factual background of the present case, the ratio in the case of Janardan Dubey (supra) cannot be applied.

39. For the reasons aforesaid this Court holds that the writ petition must succeed. The impugned attempt of the respondents to re-start the proceeding is not permissible in law and the order of dismissal passed against petitioner No. 1 and the order of reduction of pension amount passed against petitioner No. 2 are hereby quashed. This writ petition is thus allowed to the extent indicated above. There will be no order as to cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com