

Rajat Kumar Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-24-2005

Judge : Chandramauli Kumar Prasad, J.

Acts : Bihar Non-government Secondary School (Management, Control and Takeover) Act, 1981 - Sections 9; Bihar Nationalised Secondary School (Service Condition) Rules, 1983 - Rule 9, 9(1) and 9(2); Bihar Nationalised Secondary School (Service Condition) (Amendment) Rules, 1987 - Rule 2; Bihar Nationalised Secondary School (Service Condition) (Amendment) Rules, 1997 - Rule 2

Appeal No. : C.W.J.C. No. 5868 of 2005

Appellant : Rajat Kumar Singh

Respondent : State of Bihar and ors.

Advocate for Def. : Tej Bahadur Singh, SC II and Satyavrat Verma, JC to SC II

Advocate for Pet/Ap. : Ganesh Prasad Singh, Sr. Adv. and Manish Kumar, Adv.

Judgement :

Chandramauli Kumar Prasad, J.

1. Petitioner is a Clerk of High School Madhaul in the district of Sitamarhi and at the relevant time, working as such on deputation in the office of the District Education Officer, Sitamarhi.

2. The Land Reforms Deputy Collector, in its report dated 27.10.2003 (Annexure-8) addressed to the District Magistrate, Sitamarhi, wrote about the petitioner's role in attempting to make payment of salary to one Shri Prem Kumar Pandit who allegedly secured appointment on the basis of forged letter. On receipt of the aforesaid report the District Magistrate, by its memo No. 375/2004 (Annexure-9), asked the petitioner to submit his explanation through his Controlling Officer, as to why appropriate departmental action be not taken against him. Petitioner submitted his explanation dated 10.4.2004 (Annexure-10), inter alia, contending that he had no role in getting the amount disbursed from the treasury and, in fact, on account of his diligence payment could not be made to the appointee, Prem Kumar Pandit.

3. It seems that the District Magistrate wrote to the District Education Officer about the role played by the petitioner in the said episode in its letter dated 11.9.2004 and taking into account the allegation made against the petitioner, the District Education Officer, by its order as contained in memo dated 13.9.2004 (Annexure-11), put him under suspension in contemplation of a departmental inquiry. The order of suspension further indicated that memo of charge as also the order appointing the Conducting Officer shall be separately issued.

4. Thereafter, the District Magistrate served memo of charge on the petitioner by memo dated 26.4.2005 (Annexure-13) and simultaneously appointed one Executive Magistrate as the Conducting Officer and the District Education Officer as Presenting Officer. Petitioner was further directed to submit his explanation before the Conducting Officer within a fortnight and the Conducting Officer, in turn, was directed to submit the report within four weeks.

5. In this writ application, prayer of the petitioner is to quash the order of suspension dated 13.9.2004 (Annexure-11) passed by the District Education Officer and the order dated 26.4.2005.(Annexure-13) of the District Magistrate framing charge and appointing Conducting Officer and the Presenting Officer.

6. Mr. Ganesh Prasad Singh, Senior Advocate/appearing on behalf of the petitioner, contends that service condition of the petitioner is governed by the Bihar Nationalised Secondary School (Service Condition) Rules, 1983, hereinafter

referred to as the Rules, framed in exercise of the power under Section 9 of the Bihar Non-government Secondary School (Management, Control and Takeover) Act, 1981 and Rule 9 of the said Rule confers power on the appointing authority or the authority empowered by him to take disciplinary action including action of suspension, against non-teaching employees of the Nationalised Secondary School. He further points out that Rule 9(2) of the Rules provides for an appeal to the immediate superior officer to the officer who had passed the order of punishment. He submits that Rule 9(1) of the aforesaid Rules has been substituted by Rule 2 of the Bihar Nationalised Secondary School (Service Condition) Amendment Rules, 1987 and according to Rule 9(1) (ga) of the Rules as substituted, the power to take disciplinary action including the order to place a non-teaching employee under suspension has been conferred on the Headmaster of the school but that is to be approved by the District Education Officer within a period of one month.

7. Accordingly, learned counsel for the petitioner points out that the petitioner being a clerk in a Nationalised School, the power of suspension lies with the Headmaster of the School and in the present case, undisputedly the order of suspension having been passed by the District Education Officer, same is completely without jurisdiction.

8. Mr. Tej Bahadur Singh, Standing Counsel No. II, however, appearing on behalf of the State, submits that the petitioner, at the relevant time, was working on deputation in the office of the District Education Officer and the order of suspension has not been passed in relation to a misconduct allegedly committed by him, while working in the Nationalised School and as such, the District Education Officer possessed jurisdiction to place the petitioner under suspension.

9. Having appreciated the rival submission, I do not find any substance in the submission of the learned counsel for the petitioner. True it is that the petitioner is a clerk, meaning thereby a non-teaching employee and his substantive appointment is in a Nationalised School. It is further not in dispute that at the relevant time, he was on deputation in the office of the District Education Officer. Further, the misconduct alleged against the petitioner is in relation to an act done

by him, while on deputation in the office of the District Education Officer. In such circumstance, I am of the opinion that the Headmaster of the School where the petitioner held his substantive appointment, did not know about the misconduct committed by him.

10. Rule 9(1) (ga) of the Rules as amended by Bihar Nationalised Secondary School (Service Condition) Amendment Rules, 1997 reads as follows :

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x jktdh;d`r ek;/fed fo|ky;ksa ds f'k{kdsRrj

deZpkfj;ksa prqFkZoxhZ; deZpkfj;ksa dks NksMdj ds fo:) vuq'kklfud dk;ZokbZ

djus] fuyafer djus ,oa n.M nsus ekeys esa fu.kZ; ysus dh 'kf fo|ky; ds

iz/kkuk/;kid dh gksxh ijUrq mUgsa ftyk f'k{kk inkf/kdkjh dk vuqeksnu ,d ekg ds

vUnj izklr dj ysuk gksxk A**

11. The Headmaster has been conferred with the power to pass order of suspension under the aforesaid Rule but that require approval of the District Education Officer. In my opinion, in the facts of the present case, when misconduct, is not for the period the petitioner was working in the school and related to the period when he was on deputation in the office of the District Education Officer and the District Education Officer being the authority to grant approval to the order of suspension, the impugned order placing the petitioner under suspension, cannot be said to be illegal only on the ground that it has not passed by the Headmaster of the School.

12. Learned counsel for the petitioner contends that in case it is held that the District Education Officer had the power to put the petitioner under suspension, the remedy of appeal available to the petitioner under Rule 9(2) of the Rules, becomes redundant. Learned counsel points out that by Rule 2 of the Bihar Nationalised Secondary School (Service Condition) Amendment Rules, 1997, Rule 9(1) of the Rules, has been substituted and Rule 9(2) of the Rules which provides for remedy of appeal has remained intact.

13. I do not have the slightest hesitation in accepting the submission that Rule 2 of the Bihar Nationalised Secondary School (Service Condition) Amendment Rules, 1997 had substituted Rule 9(1) of the Rules and Rule 9(2) of the Rules which provides for the remedy of appeal, has remained intact. But I am not inclined to accept the submission that the remedy of appeal has become redundant. Rule 9(2) of the Rules reads as follows:

^9- vuq'kklfud dkjZokbZ %&

2 fn;s x;s n.M ds fo:)] n.M nsus okys inkf/kdkjh

ds vklUu vPpkf/kdkjh ds ;gka vihy dh tk ldsxh A**

14. From a plain reading of the aforesaid Rule, it is evident that no particular authority is authorised to hear the appeal and the appeal is required to be preferred to an Officer immediately superior to the officer who had inflicted the punishment. It is not in dispute that the District Education Officer is not the highest officer in the hierarchy and as such, it cannot be said that the petitioner has been deprived of the right of appeal. I would hasten to add that this observation may not be construed to mean that remedy of appeal is available . against the order of suspension, which has been passed in contemplation of a departmental enquiry.

15. Learned counsel for the petitioner then submits that the District Education Officer has abrogated his power to the District Magistrate and he has passed the order of suspension on his dictates and this itself renders the order of suspension illegal in the eye of law. I do not find any substance in this submission of the learned counsel. It is wrong to say that the District Education Officer had passed the order at the dictates of the District Magistrate. In my opinion, any public servant small or high can bring to the notice of the competent authority the acts of omission and commission committed by another public servant and when the authority competent to take decision, takes cognizance of the same, applies his mind and then passes adverse order against a delinquent employee, it cannot be said that the authority competent had abrogated his power. In the present case. It came to the notice of the District Magistrate about the attempt made by the petitioner for disbursement of the amount to a person who secured appointment by

a forged letter. He got an inquiry made and forwarded the result of the inquiry to the District Education Officer who considered the facts of the present case, and on consideration of the report and application of mind passed the order of suspension. Hence, the order of suspension cannot be held to be illegal on the ground that the District Education Officer has abrogated his power and has passed the order on the dictates of the District Magistrate.

16. Learned counsel for the petitioner then attempted to argue that the allegation of misconduct levelled against the petitioner is false and in fact on account of his diligence, the amount could not be released for payment. I am not inclined to go into the merit of this submission as it is well settled that truthfulness or otherwise of the allegation made is to be first decided by the departmental authorities and this Court, in exercise of its writ jurisdiction, does not go into such questions unless an exceptional case is made out. Present is not one of such cases, in which I am inclined to go into the truthfulness of the misconduct alleged against the petitioner.

17. Having negatived all the contentions raised on behalf of the petitioner, I am of the opinion that the order of suspension does not suffer from any error.

18. Mr. Singh, counsel for the petitioner while assailing the order as contained in memo dated 26.4.2005 framing the charge, and appointing the Conducting Officer passed by the District Magistrate, contends that under the Rules which governs the service conditions of the petitioner, the District Magistrate has no role and hence same is absolutely illegal and completely without jurisdiction. Standing Counsel No. II has not been in a position to bring before me any provision of law, which confers power on the District Magistrate to frame charge against a non-teaching employee of the school on deputation in the office of the District Education Officer. That being the position, I have no option than to hold that the District Magistrate has no authority to direct framing of the charge against the petitioner and appointing Conducting Officer for holding the departmental inquiry. This being the position, the order of the District Magistrate as contained in memo dated 26.4.2005 (Annexure-13) cannot be allowed to stand.

19. As the order of suspension has been passed in contemplation of a departmental inquiry and I have found that to be legal and valid, hence, I deem' it

expedient that in case the authority intends initiating the departmental proceeding, same be initiated, if already not initiated, and be concluded within a period of six months from the date of receipt/production of a copy of this, order. I direct accordingly.

20. In the result, this writ application is partly allowed, the charge levelled against the petitioner by the District Magistrate in its memo dated 26.4.2005 (Annexure-13) is quashed and the respondents are directed to act in accordance with law bearing in mind the direction aforesaid. No cost.

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