

Arun Kumar Mishra Vs. State of Bihar and ors.

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Court : Patna

Decided On : Dec-04-2001

Judge : Narayan Roy, J.

Appeal No. : C.W.J.C. Nos. 13589 and 13612 of 2001

Appellant : Arun Kumar Mishra

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard learned Counsel appearing on behalf of the petitioner, and JC to SC 9.
2. Both these writ applications involve common questions of law and facts, therefore, they have been heard together and the same are being disposed of by this order.
3. Short facts giving rise to this application are as under.
4. Both these petitioners were put under suspension by order, as contained in Annexure 1, in contemplation of a departmental proceeding by the sole respondent, Director, Primary Education, Patna, dated 30-6-1999 and in the

departmental proceeding, charges were served on the petitioners, which were answered by the petitioners and, ultimately, the inquiry officer submitted reports exonerating the petitioners. The sole respondent, however, without referring to the inquiry report, as referred to above, imposed certain penalties, upon the petitioners vide orders, as contained in Annexure 3, respectively.

5. Learned Counsel appearing on behalf of the petitioners submits that the orders impugned are in gross violation of the principles of natural justice, as no notice was given to the petitioners on the question of difference by the disciplinary authority, as the inquiry officer had not found the petitioners guilty and recommended for their exoneration.

6. Separate counter-affidavits have been filed in both the cases stating therein that the Director being the highest authority has passed the orders impugned.

7. Paragraph 10 of the writ application states as follows:

That the Respondent has not differed with the finding of the conducting officer or has assigned any reason for imposition of such punishment, nor the petitioner was afforded any opportunity of hearing on the point of punishment even though the punishment imposed is major punishment.

Learned Counsel, appearing on behalf of the petitioners, further submits that it would be evident from Annexure 2 that the inquiry officer had recommended for exoneration of the petitioners, but nothing has been said in the order impugned, as contained in Annexure 1, about the difference of opinion, nor there is anything to indicate that opportunities were given to the petitioners to have their say before punishments were imposed.

8. The disciplinary authority is entitled to differ with the inquiry report, but he is required to assign reasons for that and also to afford opportunity to the delinquent employee, as it is an ingredient of fair play in a departmental proceeding. The orders impugned, as contained in Annexure 3, at the face of it do not show that any reason has been assigned for difference by the authority nor there is anything to show that opportunity of hearing was given to the petitioners before passing the

orders impugned. The counter-affidavit filed on behalf of the State, is conveniently silent so far as the statement made in paragraph 10 of the writ application is concerned, wherein in categorical terms it is stated that no opportunity, whatsoever, was given to the petitioners. In this circumstance, I have reasons to presume that the orders impugned, as contained in Annexures 3, respectively, have been passed without giving an opportunity of hearing to the petitioners to defend themselves.

9. The question on this point is settled that for difference with the inquiry report, a notice is required to be given to the delinquent and there should be sufficient reasons for difference in the order of the disciplinary authority.

10. In *Managing Director, ECIL, Hyderabad and Ors. v. S. Karunakar and Ors.* (1991) 4

SCC 727, it is held that the delinquent employee is entitled to a copy of inquiry report and has right to reasonable opportunity to represent. In *Punjab National Bank and Ors. v. Kunj Bihari Misra* : (1998) IILLJ809SC , the same view has been reiterated and it has been held that for difference with the inquiry report, a notice is required to be given to the delinquent. Again in the case of *State Bank of India and others v. Arvind Kumar Shukla* JT 2000(1)

SC 496, the Apex Court has taken the same view.

11. In view of the legal prepositions, referred to above, it appears that the action of the respondent authority is highly unreasonable and without jurisdiction.

12. In the result, these application are allowed and orders impugned, as contained in Annexure 3 in both the cases, are set aside. The authority, if so advised, may proceed in the matter in accordance with law.

13. No order as to costs.