IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P(S) No. 6249 of 2019

Guru Nanak College, Dhanbad through its Secretary, Diljaun Singh Grewal, Dhanbad …. …. Petitioner(s).

Versus

1. State of Jharkhand through Secretary, Higher, Technical Education & Skill Development Department, Nepal House, Doranda, Ranchi
2. Binod Bihari Mahto Koylanchal University through its Registrar, Dhanbad
3. Vice Registrar, Binod Bihari Mahto Koylanchal University, Polytechnic Building, Dhanbad
4. Jharkhand Public Service Commission through its Secretary, Ranchi
5. Prabhat Kumar …. …. Respondent(s)

CORAM : HON'BLE MR. JUSTICE ANANDA SEN.

For the Petitioner(s) : Mr. Arpan Mishra, Advocate
For the State : Mr. Aditya Raman, AC to GA-III
For JPSC : M/s. Sanjoy Piprawall, Prince Kumar & Rakesh Ranjan, Adv.
For University : Mr. Anoop Kumar Mehta, Advocate
For Resp. No.5 : Mr. Rahul Kumar, Advocate

5/28.02.2023

Heard the parties.

2. Petitioner, an affiliated minority college, is aggrieved by the part of the order dated 5.9.2019 whereby the Appellate Authority i.e Vice Chancellor after holding that dismissal of respondent no.5 is bad, as the proviso of Section 57A of the Jharkhand State University Act was not followed and the punishment was disproportionate to the proved misconduct which did not warrant dismissal, has himself substituted the punishment.

3. Mr. Arpan Mishra, counsel appearing on behalf of the petitioner raises a very small issue. He submits that Appellate Authority could not have substituted the punishment order with his view, as it is the prerogative of the Disciplinary Authority to punish the delinquent employee. As per him if the punishment was not in accordance with the law or is disproportionate, after setting aside the order of punishment, the matter should have been remitted to the Disciplinary Authority.

4. Mr. Anoop Kumar Mehta, counsel appearing on behalf of the University submits that Vice-Chancellor is definitely the Appellate Authority and is empowered to take a decision on the quantum of punishment also. He submits that after considering the rival contentions, the Vice-Chancellor found that the legal process was not followed by the College before dismissing the respondent no.5. The Appellate Authority was also of the opinion that the punishment of dismissal is shockingly disproportionate to the proved misconduct committed by respondent no.5, thus the order was passed setting aside the order of punishment allowing the petitioner to join his service.

He further submits that period of absence was directed to be treated as extraordinary leave without pay and the period of service was treated as notional service giving all other benefits, other than pecuniary benefits. As per him there is no illegality in the aforesaid direction.

5. Counsel appearing on behalf of the respondent no.5 also adopts that argument put forth by the counsel appearing on behalf of the University. He adds that even the act which has been committed, cannot be said to be misconduct. He further submits that Appellate Authority as per law has jurisdiction to substitute the punishment. He further submits that there is violation of principle of natural justice in the proceeding.

6. The petitioner is a religious minority institution. It is affiliated with Binod Bihari Mahto Koylanchal University, Dhanbad. Respondent no.5 is a lecturer in department of English. He was working in the said college since 1991. Departmental proceedings was initiated against the petitioner for committing act of indiscipline. The charges against the petitioner are as follows:-

i) Disobedience resulting into indiscipline;

ii) Causal attitude resulting into dereliction in duty;

iii) Misconduct and irresponsible behaviour.

iv) Insubordination.

v) Besides, he has been running construction business in the name of his wife.

7. Respondent no.5 was suspended with effect from 4th August, 2016. An inquiry was conducted and the report of the Enquiry Officer was submitted before Disciplinary Authority. Three member Enquiry Committee found the charges levelled against the petitioner to be proved. The Disciplinary Committee which is the Governing Council of the petitioner college considered the Enquiry Report and took a decision to dismiss the petitioner from the services of the college with effect from 2nd February, 2017. The order of the dismissal was challenged before the Chancellor of the Universities. As the Chancellor was not the Appellate Authority an order was passed to file an appropriate appeal before Vice-Chancellor. Thus an appeal was filed before the Vice-Chancellor which was allowed on 5.9.2019. This order is under challenge.

8. I find that the Appellate Authority allowed this appeal of respondent no.5 on two grounds :-

(a) There was no approval of Jharkhand Public Service Commission before dismissing the respondent no.5

(b) The punishment was disproportionate to the act and does not warrant dismissal.

9. An order passed in a Disciplinary proceedings can be interfered with, on amongst other, if Act & Rules governing the Disciplinary proceeding has not been followed and /or the punishment is shockingly disproportionate to the proved misconduct. Hon'ble Supreme Court in the case of ***Director General of Police, Railway Protection Force and Others versus Rajendra Kumar Dubey*** reported in ***2020 SCC OnLine SC 954*** at paragraph 37 thereof has held that it is well settled that High Court cannot act as an Appellate Authority and re-appreciate the evidence, which was led before the enquiry officer. By referring to judgment in the case of ***State of Andhra Pradesh & Others versus S. Sree Rama Rao*** reported in ***AIR 1963 SC 1723***, the Hon'ble Supreme Court has held that it is not the function of the High Court to review the findings and arrive at a different decision.

10. In a departmental proceeding, scope is very limited and it is well settled that the High Court can interfere where the departmental authority has acted against the principles of natural justice or where the findings are based on no evidence or in violation of the statutory rules provided. Further, if the punishment imposed is excessive, the Court can interfere. It has also been held by the Hon'ble Supreme Court that under Article 226 and 227 of the Constitution of India, the High Court shall not:-

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in the case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

11. Further, in the case of ***Deputy General Manager (Appellate Authority) and Others versus Ajay Kumar Srivastava*** reported in ***(2021) 2 SCC 612***, the Hon'ble Supreme Court at paragraph 24 thereof has held as under:-

> *"24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence*

reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."

12. In paragraph 25 of the aforesaid judgment ***(Ajay Kumar Srivastava)*** the Hon'ble Supreme Court has narrated the scope, which reads as follows:-

"25. When the disciplinary enquiry is conducted for the alleged misconduct against the public service, the court is to examine and determine:
(i)whether the enquiry was held by the competent authority;
(ii)whether rules of natural justice are complied with;
(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion."

13. In paragraph 28 of the aforesaid judgment ***(Ajay Kumar Srivastava)*** the Hon'ble Supreme Court has held that while exercising jurisdiction under Article 226 or 136 of the Constitution, the Court will not interfere with the findings of fact arrived at in the departmental enquiry proceeding, except in a case of mala fides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

14. The first proviso of section 57 A of the Jharkhand State University Act, 2000 provides that the Governing Body of affiliated minority college has to take an approval from the Jharkhand Public Service Commission before appointing, dismissing or removing or terminating the teachers from service. But as per the second proviso of Section 57 A of the said act, this advice is not necessary if minor punishment is sought to be inflicted. It is necessary to quote the 57A of the Jharkhand State University Act, 2000 which is as follows:-

"57A. (1)Appointment of teachers of affiliated Colleges not maintained by the State Government shall be made by the Governing Body on the recommendation of the 2[Jharkhand Public Service Commission, Dismissal, termination, removal, retirement from service or demotion in rank of teacher of such colleges shall be done by the Governing Body in consultation with the [Jharkhand Public Service Commission in the manner prescribed by the Statues.

Provided that the Governing Bodies of affiliated minority colleges based on religion and language shall appoint, dismiss, remove or terminate the services of teachers or take disciplinary

action against them with the approval of the 2[Jharkhand Public Service Commission:

Provided further that the advice to the 2[Jharkhand Public Service Commission shall not be necessary in cases involving censure, stoppage of increment or crossing of efficiency bar and suspension till investigation of charges is completed."

15. In the case in hand admittedly, there was no approval of Jharkhand Public Service Commission. The Governing Body did not seek any approval to remove the respondent no.5 from service. Thus, the order of removal being bad on this ground, is correctly set aside by the Appellate Authority.

16. Another ground of setting aside the impugned order is that the punishment is shockingly disproportionate to the proved misconduct. I am not entering into the facts as to whether the punishment was shockingly disproportionate or not, but since the Appellate Authority considering the charge had arrived at a conscious decisions that the punishment was disproportionate, I am not interfering with the said findings.

17. After setting aside the punishment order, the Appellate Authority went on to pass the following order:-

"In view of the above facts and also on the basis of apology submitted by Sri Prabhat Kumar he may be allowed to join his services. The period of his absence may be treated as extraordinary leave without pay as he was not allowed to render his service by the respondent. This in itself is enough a punishment for his deeds. However, this period of service may be treated as national service rendered giving all other benefits, other than pecuniary."

*(be it noted that the word "**national**" according to this Court should be "**notional**". This fact has also been admitted by all the parties).*

18. The Hon'ble Supreme Court in catena of decisions has held that what punishment should be inflicted upon the delinquent employee, is the prerogative of the employer.

19. In ***Union of India & Ors. Vrs. Ex.Constable Ram Karan*** reported in (***2022) 1 SCC 373*** in para 24, the Hon'ble Supreme Court has held as under:-

"24……..However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of the punishment awarded by the Competent Authority that to after assigning cogent reasons."

The Hon'ble Supreme Court is of the opinion that in a rare and extraordinary case, Court can substitute the punishment. In the aforesaid judgment in the same paragraph the Hon'ble Supreme Court has held that after setting aside the penalty order, it is to be left to the Disciplinary/Appellate Authority to take a call and it is not for the court to substitute its decision by prescribing the quantum of punishment.

20. Since the initial order of punishment was passed by the Disciplinary Authority, I am of the opinion that the Appellate Authority should have relegated the matter to the Disciplinary to decide the quantum of punishment. As per the aforesaid judgment it is the authority who had imposed the order of punishment i.e Disciplinary Authority which should have been given an opportunity to pass the order afresh. The Appellate Authority while setting aside the order of punishment in normal course should not have passed the order of punishment. Thus, I am inclined to set aside the last paragraph of the impugned order dated 5.9.19 whereby the Appellate Authority had substituted the quantum of punishment. The matter, is thus remitted to Disciplinary Authority i.e Governing body to take a fresh decision on the quantum of punishment. It is made clear that if the Disciplinary Authority does not intend to impose any punishment in terms of first proviso of Section 57A, the matter need not be referred to Jharkhand Public Service Commission. While passing the order they will consider that this Court has not interfered with the finding of the Appellate Authority on the issue that punishment was disproportionate and did not warrant dismissal. The decision should be taken within a period of eight weeks from the date of receipt/production of copy of this order. The status of the petitioner for intervening period will also be decide by the said Authority.

21. With the aforesaid observation, the instant application stands allowed.

(ANANDA SEN , J)

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