

Sayeedur Rehman

Vs

The State of Bihar and Others

Civil Appeal No. 1222 of 1967

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

28.11.1972

JUDGMENT

DUA, J. -

1. This appeal is by Special Leave and is directed against the order of the High Court of Judicature at Patna, dated September 3, 1965, dismissing the appellant's writ petition.

2. The appellant, a teacher of Araria Higher Secondary School was dismissed from service by the Managing Committee of the said school at a meeting held on February 27, 1958, on a charge of misappropriation of school money. On appeal by him the President of the Board of Secondary Education, set aside the order of dismissal by order, dated April 22, 1960 and directed his reinstatement in service. By the same order of reinstatement a further direction was given that the appellant should be paid full salary, dearness allowance and increment from the date of his suspension till the date of reinstatement after adjusting the amount already paid. When this order was received by the Managing Committee it was obeyed so far as the reinstatement of the appellant is concerned but the Managing Committee requested the President of the Board of Secondary Education "to review the whole matter especially with regard to the payments for the period of suspension". The President by his order, dated February 25, 1961, reviewed the matter and modified his earlier order made on appeal by providing that the appellant would be entitled only to subsistence allowance for the period of his suspension. That decision was conveyed by the Secretary, Board of Secondary Education to the District Education Officer in letter No. 2799-100-1, dated February 25, 1961, which reads :

"With reference to your letter No. 957, dated July 29, 1960, I have, under orders of the President to say that you direct the Managing Committee of the Araria High School, to treat the period during which Shri Sayeed-ur-Rahman remained off duty, as period of suspension and pay him subsistence allowance according to the rules."

3. It is not disputed before us that this order was made without affording the appellant any hearing. After the said order the appellant is said to have made several representations to the President of the Board but reconsideration of the order, dated February 25, 1961, was declined and it was reiterated that the appellant was entitled only to subsistence allowance during the period of suspension. That order was conveyed by the Secretary, Board of Secondary Education to the appellant as per communication No. 233/4-A-97-58, dated January 18, 1964, which reads :

"With reference to your representation, dated December 27, 1963, I have to state that the President, Board of Secondary Education, Bihar had been pleased to order that

Shri Sayeedur Rahman should be paid subsistence allowance only during his suspension period. The order cannot be revised now."

4. It is not disputed that this order was also made without affording any hearing to the appellant.

5. The appellant thereupon filed an application under Articles 226 and 227 of the Constitution in the High Court of Judicature at Patna in which it was contended on his behalf that the President of the Board of Secondary Education could not modify the earlier order, dated April 22, 1960, without giving to the petitioner an adequate opportunity of being heard. The High Court considered this argument to be without merit because according to an earlier Bench decision of the High Court in *Liladhar Jha v. Board of Secondary Education, Patna, (1963 BLJR 880)* the President of the Board of Secondary Education as appellate authority was empowered only to direct reinstatement of a dismissed teacher and had no jurisdiction to make any order with regard to the payment of any arrears due to him. Though the correctness of this decision was questioned before the High Court by the counsel representing the appellant in that Court the Bench hearing the writ petition did not consider it to be a fit case for reference to a large bench to re-examine the view taken in the case of *Liladhar Jha (supra)*. On this view the High Court held the order of the President of the Board of Secondary Education, dated April 22, 1960, directing payment of full salary, dearness allowance and increment to the petitioner from the date of his suspension till the date of reinstatement to be invalid. Having so held the High Court proceeded to observe that the petitioner would gain nothing if it was further held that the subsequent order of the President, dated January 18, 1964, modifying the earlier order of April 22, 1960, was held invalid on the ground that no opportunity of hearing was given to the appellant. This question, in the opinion of the High Court, had become somewhat academic because the appellant could not get any relief in that writ petition.

6. Before us on behalf of the appellant it was strenuously contended that the appellant had approached the High Court with his grievance only against the order made by the President of the Board reviewing his earlier order, dated April 22, 1960, without hearing the appellant and that being the only relief claimed by him, if the said order of review was unconstitutional having been made to the appellant's prejudice without affording him an adequate opportunity of being heard then the High Court could not decline him the relief of declaring it to be invalid, on the sole ground that the earlier order (which was not challenged by the petitioner in those proceedings and had not been got quashed by the Managing Committee in any appropriate proceedings) being contrary to law on the basis of *Liladhar Jha case (supra)*, it would be somewhat academic to declare as invalid the review order impugned by the appellant before that Court. According to the appellant so long as the order of the Board of Secondary Education reviewing the earlier order of April 22, 1960, was not expressly declared to be invalid, the Managing Committee of Araria Higher Secondary School was not likely to pay to him the arrears of salary due to him as a result of the order of his reinstatement in service. In this connection the appellant's learned counsel drew our attention to Rule 18 of the rules governing the service conditions of teachers in non-Government High Schools framed as per Government resolution, dated September 7, 1955. This rule reads :

"18. In case the Managing Committee violates these rules or fails to carry out the orders and instructions of the Board of Secondary Education, or give effect to the decisions of the Board, the Board shall have the right to withdraw recognition of the school or suspend the grant or take such order action or actions as it may think fit."

7. According to the submission, the Managing Committee is bound to carry out the orders and instructions of the Board and if the orders, dated February 25, 1961 and January 18, 1964, are not

quashed the Managing Committee may feel reluctant to ignore them. Our attention was also drawn to Rule 12(2). Rule 12 provides :

"12. The Managing Committee may impose the following punishment on any member of the staff including those on probation after having finally considered his explanation and the charges levelled against him in writing : (i) Warning; (ii) Censure; (iii) Withholding of normal increments; (iv) Discharge : (v) Dismissal.

Notes. - (1) Proceedings are to be started against teachers concerned by the Secretary on the report of the Headmaster or by the President, on the report of the Secretary or by the President himself, or by the Managing Committee as a whole. Ordinarily the Managing Committee as a whole has the power to suspend the teacher but in cases of urgency, the Secretary in consultation with the President may suspend a teacher but this must be approved by the Managing Committee within a fortnight. Charges must be handed to the teacher in writing within two days of the suspension order. The teacher concerned must submit his explanation within seven days of the receipt of the charges. A meeting of the Managing Committee shall be convened within a fortnight from the date of suspension order, for which a clear seven days' notice shall be given to every member. Such meetings should have a quorum of two-third of the total number of members (that is, eight members). If the teacher member or the Headmaster himself is involved, he shall not attend the meeting. Orders of discharge or dismissal shall be valid only if they have been passed by the Managing Committee. In no case, however, shall a teacher be kept, under suspension for a period exceeding 30 days or in case he has filed an appeal up to two months or till the disposal of his appeal.

(2) During the period of suspension the teacher shall be allowed to draw half his salary plus dearness allowance and upon exoneration, the balance shall be paid to him."

8. On behalf of the respondent Shri S. C. Agarwal appearing for the State of Bihar and the Board of Secondary Education, did not challenge the view taken by the Patna High Court in the case of Liladhar Jha (supra). He tried to justify the impugned order only on the reasons stated by the High Court.

9. In our opinion on the facts and circumstances of this case it was incumbent on the High Court to declare as invalid, the order of the President of the Board of Secondary Education, dated February 23, 1961, reviewing the earlier order, dated April 22, 1960, without affording to the appellant any opportunity of being heard, and also his order, dated January 18, 1964. The appellant had approached the High Court with a grievance against that order and the order, dated April 22, 1960, which was in his favour, was advisedly not challenged by him. To decline to the appellant the relief was without doubt entitled, on the mere ground that it would be academic to do so, seems to us to be highly unfair and unjust to the appellant, because, as represented before us, the Managing Committee might well take a different view and feel that the orders passed by the President of the Board of Secondary Education, reviewing the earlier order, dated April 22, 1960, having not been specifically quashed and set aside by the High Court, are still operative, demanding compliance. Under Rule 18 and Section 5 of the Bihar High Schools (Control and regulation of Administration) Act 1960 (Bihar Act XIII of 1960), the Managing Committee is expected to obey the directions of the Board. It may also be pointed out that under Section 6 of the above Act orders of the Board are

final. It is not stated before us that the order, dated April 22, 1960, was ever got set aside by the Managing Committee or even assailed by it in appropriate proceedings, but we express no considered opinion on that question, the same having not been canvassed before us.

10. In our view, the only just and fair order to be made in these proceedings is to allow this appeal, set aside the impugned order of the High Court as also the order made by the President of the Board of the Secondary Education, dated February 25, 1961 (reviewing his earlier order, dated April 22, 1960) along with the subsequent order of the president of the Board, dated January 18, 1964, rejecting the appellant's representation and reiterating the order that he should be paid subsistence allowance only during his suspension period. After setting aside these orders the position is that the parties are relegated to the stage immediately prior to the order, dated February 25, 1961, with the result that the President of the Board of Secondary Education would now have to deal with and dispose of, in accordance with law, the request of the Managing Committee of Arari Higher Secondary School for re-considering the order of April 22, 1960. If the Board deems it proper to re-consider that order then the appellant must be afforded a reasonable opportunity of hearing and of adequately representing his case. Rule 16 provides for appeal from the orders made under Rule 15 and Rule 17 provides for hearing the appellant and the Secretary of the Managing Committee. Rule 17 reads :

"17. The appeal of the person concerned shall be heard by the President of the Board of Secondary Education or any member of the Board of Secondary Education duly nominated by the President or any officer ordinarily not below the rank of Inspector of Schools. The appellant and the Secretary of the Managing Committee may be heard in person by the President, Board of Secondary Education or his nominee who may even authorise them to be represented by a representative."

11. This rule embodies the principle of natural justice requiring the appellate authority to hear the parties. The order, dated April 22, 1960, must have, therefore, been made after hearing both sides as provided by this rule. There is no express provision for review in the rules to which our attention was drawn. But we are not asked and, therefore, not required to express any considered opinion on the competence of review and we express none. We are, however, clear that if the order, dated April 22, 1960, is to be reconsidered then the appellant must be afforded adequate opportunity of hearing and presenting his case. This unwritten right of hearing is fundamental to a just decision by any authority which decided a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The President of the Board of Secondary Education would be deciding a controversy affecting the rights of the parties before him if and when he chooses to reconsider the order, dated April 22, 1960, whatever be the source of his power to do so - a point left open by us. He is required to decide in the spirit and with a sense of responsibility of a tribunal with a duty to mete out even-handed justice. The appellant would thus be entitled to a fair chance of presenting his version of facts and his sub-missions on law as his rights would be directly affected by such proceeding. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering the order, dated April 22, 1960, is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of armies.

12. We also express no opinion on the question of the correctness or otherwise of the view taken by

the Patna High Court in the case of Liladhar Jha (supra), nor do we express any opinion about the scope and effect of Rule 12(2) referred to above or of any other rule or rules which may be attracted to the appellant's case. Indeed, this order is not to be construed as containing any opinion on the merits of the controversy except that the aforesaid orders of the President made in 1961 and 1964 have been quashed. The appellant is entitled to his costs from the contesting respondents.

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