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Jharkhand High Court

Case No: Writ Petition (S) No. 2576 of 2004

Dr. Kailash Vihari	APPELLANT
Vs	
Birla Institute of Technology and Others	RESPONDENT

Date of Decision: Aug. 22, 2006

Citation: (2007) 1 BLJR 258 : (2007) 1 JCR 58

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: Altaf Hussain, for the Appellant; S. Choudhary, for the Respondent

Final Decision: Allowed

Judgement

Permod Kohli, J.
Petitioner has questioned Letter No. 246 dated 5th September, 2002 issued by Respondent No. 3, whereby one Sri B.B. Pant, Registrar, has been appointed as Enquiry Officer to enquire into alleged charges against the petitioner. He has further prayed for a direction to make payment of full salary along with interest for the period of suspension from 16th September, 1999 to the date of retirement i.e. 30th November, 2001.

2. It is necessary to notice briefly the factual background. Petitioner was appointed as Assistant Professor in Birla Institute of Technology, Mesra (hereinafter to be referred as "BIT"). He continued to work on the post till his retirement on attaining the age of superannuation i.e. on 30th November, 2001. On the basis of some complaint said to be made by one Lal Mirtyunjay Nath Sahdeo, petitioner was placed under suspension vide Letter No. 3206 dated 16th September, 1999 by Respondent No. 3. He was also served with charges. He was intimated regarding appointment of one man committee, comprising of Sri Satish Bakshi, to enquire into, the charges against him vide letter dated 8th October, 1999.

3. Appointment of said Sri Bakshi as Enquiry Officer was challenged by the petitioner before this Court in C.W.J.C. No. 20 of 2000. This writ petition came to be allowed and

the appointment of Sri Satish Bakshi, Advocate was set aside by this Court vide order dated 29th November, 2001. While setting aside the order, this Court granted liberty to the respondents to proceed further in the departmental enquiry by appointing a departmental person, as an Enquiry Officer, if permissible under law Suspension of the petitioner was also simultaneously revoked with effect from the date of the judgment in view of impending retirement of the petitioner, who was due to retire from service on 30th November, 2001. After his retirement one R.S. Yadav was appointed as Enquiry Officer in January, 2002. Petitioner represented to the Vice Chancellor against continuation of the enquiry. Thereafter, vide impugned letter dated 5th September, 2002, one Sri B.B. Pant has been appointed as an Enquiry Officer. Petitioner has, accordingly, approached this Court seeking quashment of the impugned letter, whereby Sri B.B. Pant has been appointed as Enquiry Officer and disciplinary proceedings have been continued.

4. The short question, which is required to be considered by this Court, is whether respondents are entitled to continue the disciplinary proceedings against the petitioner after his retirement under rules, particularly, in view of observations of this Court in the judgment dated 29th November, 2001.

5. It is important to note the relevant observations of this Court in the aforesaid judgment, which reads as under:

21. Further, taking into consideration the facts and circumstances, as the Respondents have liberty to proceed further in the departmental enquiry by appointing a departmental person as an Enquiry Officer and the petitioner is under suspension for more than two years and is to superannuate from service after few days on 30th November, 2001, in the interest of justice, the order of suspension is revoked from today. The Respondents may proceed and continue with the departmental proceeding, if permissible to continue after retirement under the law.

6. A Letters Patent Appeal filed against this judgment has also failed.

7. I have heard learned Counsel appearing for the parties.

8. Learned Counsel appearing for the petitioner has referred to Rules and Regulations framed by Birla Institute of Technology, Mesra, Ranchi. Rule 12 deals with terms and conditions of the service of permanent employees. Rule 11(b) deals with the penalty to be imposed on member of staff. There is no rule, which provides for continuation of disciplinary enquiry against member of the staff after his superannuation.

9. Learned Counsel for the Respondent-Institute has also not been able to show any Rules or Regulations, which permit the continuation of the disciplinary enquiry after retirement. This issue has been considered by the Hon''ble Supreme Court in the case of Bhagirathi Jena v. Board of Directors, O.S.F.C. and Ors. reported in 1999(4) SC 9. In the aforesaid case, Hon''ble Supreme Court held as under:

There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

10. Similar view was taken by the High Court in the case of Bindhya Nath Jha and Anr. v. The Patna Regional Development Authority and Anr. reported in Bindhya Nath Jha and Another Vs. The Patna Regional Development Authority and Another, .

11. In view of the law laid down by the Hon"ble Supreme Court and in absence of there being any rule allowing continuance of disciplinary proceedings after retirement, impugned letter dated 5th September, 2002 appointing the new Enquiry Officer and continuation of the disciplinary proceedings against the petitioner is not sustainable in law and liable to be quashed.

12. As a consequence of the quashment of the disciplinary proceedings, petitioner shall be entitled to all service and retiral benefits including for the period of suspension, subject to condition that the petitioner was not lawfully engaged elsewhere during the period of suspension. Respondents will decide the period of suspension and pass appropriate orders. If it is found that the petitioner was not lawfully employed, he will be entitled to all salary and other benefits for the said period.

13. This petition is allowed.