(2012) 07 JH CK 0076

Jharkhand High Court

Case No: A.C. (SB) Case No. 2 of 2010

Manoranjan Prasad Sinha		APPELLANT
	Vs	
Managing Committee, Greenland Public School		RESPONDENT

Date of Decision: July 19, 2012

Acts Referred:

- Jharkhand Education Tribunal Act, 2005 - Section 11, 15

Citation: (2013) 1 AJR 56 : (2012) 4 JLJR 346

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: Rajeeva Sharma, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.P. Bhatt, J.
Present appeal has been filed u/s 15 of the Jharkhand Education Tribunal Act, 2005 being aggrieved and dissatisfied with the judgment and order passed by the Jharkhand Education Tribunal, Ranchi in Case No. 39/09 (JET), Whereby the learned Tribunal dismissed the petition filed by the petitioner and thereby declined to interfere with the order of termination passed by the Management and also the order passed in Review Case No. 3 of 2009 (JET), whereby the review petition was also ordered to be dismissed. Appellant Manoranjan Prasad Sinha appeared in person and submitted that the learned Tribunal has failed to consider the material evidence of the case which was produced before it. It is submitted that the Tribunal failed to appreciate the fact that the appellant was appointed as Vice-Principal initially for a period of one year on probation basis and thereafter he was continued on regular post. It is further submitted that the learned

Tribunal has also failed to appreciate that the termination order passed by the respondent was punitive in nature as the letter of termination specifically provides that the services of the petitioner is terminated as a disciplinary measure. It is further submitted that the learned Tribunal has also failed to appreciate various grounds raised before it in respect of requirement of CBSE bye-laws, whereby requisite qualification for appointment as well as procedure, for conducting disciplinary inquiry were not followed by the respondent-Management. It is also submitted that action of the respondent was in clear contravention of principle of natural justice. However, the tribunal failed to appreciate this very material aspect of the entire case. It is further submitted that the learned Tribunal has also failed to appreciate that the appellant was possessing requisite qualification for appointment. According to appellant, he was possessing requisite qualification prescribed under CBSE bye-laws, however, the learned Tribunal has reached to the conclusion that the initial appointment of appellant was ab initio void as the appellant was not possessing requisite qualification for appointment. Party in person, while referring various grounds with regard to educational qualification, appointment and the salary statement etc., pointed out that his initial appointment was made as Vice-Principal and the appointment order was issued by the Principal of the School. It is also submitted that as per CBSE bye-laws, Principal is the authorized officer on behalf of the Management to look after the administrative affairs of the School and run day to day administration and accordingly, the appointment letter was given by the Principal. It is further submitted that the respondent had submitted fabricated documents before the learned Tribunal so as to show that the appellant was appointed by the President of the respondent-School Management and his appointment was done on contractual basis. It is further submitted that the learned Tribunal has not properly considered and examined the various documents on record and reach to the conclusion that initial appointment of the appellant was not done in accordance with CBSE bye-laws. While concluding his argument, the party in person submitted that the orders passed by the learned. Tribunal are contrary to the factual and legal position in the matter and therefore, deserve to be set aside.

2. As against that, learned Senior Counsel for the respondent, white justifying the orders passed by the learned Tribunal, submitted that the Tribunal has passed the orders after careful consideration of the material/evidence produced on record. It is further submitted that the Tribunal has observed in its order that the appointment of the appellant was not made in consonance with the provisions of CBSE bye-laws. It is further submitted that the present appellant was appointed by the respondent-Management purely on contractual basis. While referring the appointment order, learned Senior Counsel for the respondent pointed out that his initial appointment was made purely on contractual basis and the appellant is not having any right to continue over the post in question. It is further submitted that since the conduct of the appellant was not found satisfactory, during his contractual appointment, respondent management terminated his service. It is further submitted that the appellant was not possessing requisite qualification, such as, Teaching Degree or Diploma in Education, which is required as per CBSE bye-laws. It is further submitted that, according to the appellant, he was possessing certificate issued by the

Sister Nivedita College, Kolkata and the said institution was not recognized in terms of the circular issued by the State of Jharkhand dated 16.2.2004 and therefore, the learned Tribunal has rightly observed in its order, while making reference of the said circular, that the appellant was not possessing requisite qualification for appointment and therefore, termination order has been confirmed by the learned Tribunal. It is further submitted that the orders passed by the learned Tribunal are based on legal proposition as enumerated therein and therefore the appeal preferred by the appellant may be rejected. Learned Senior Counsel for the respondent further submitted that the Principal is not the appointing authority; President of the School Management is the appointing authority and therefore, the appointment order produced by the Management is the correct/real appointment order. It is also submitted that documents produced by the appellant before the Tribunal are false and fabricated documents and therefore, the learned Tribunal has rightly not believed those documents and thereby dismissed his petition. It is further submitted that the appellant was asked to produce original documents but the appellant did not produce original documents for its verification and obtained appointment by playing fraud, therefore, the initial appointment itself is fraudulent and not sustainable in the eye of law. Learned Senior Counsel for the respondent further submitted that even teaching experience certificate was not produced before the Tribunal also.

3. Considering the aforesaid rival submissions and on perusal of the orders passed by the Tribunal, it appears that the present appellant has challenged the termination order before the Tribunal. It is the case of the appellant that he was appointed as Vice-Principal in the said School w.e.f. 1.12.2007 and in support thereof, appellant has produced the appointment order issued by the Principal of the School giving him appointment on the post of Vice-Principal. It appears that respondent-Management has also produced another set of documents to show that the appellant was appointed purely on contractual-basis with consolidated salary of Rs. 12,205/- per month and the appointment letter was issued by the President of the respondent-School Management. On perusal of the orders passed by the Tribunal, it appears that the Tribunal has not properly considered the order passed by the respondent-Management regarding termination of the appellant''s service. On perusal of the order of termination issued by the respondent-School Management, it appears that the said termination was made as a disciplinary measure. Under the circumstances, requisite procedure, prescribed under the CBSE bye-laws, was required to be followed but, unfortunately, it appears that the said procedure has not been followed by the respondent-Management before termination of service. Therefore, the order of termination appears to be in clear violation of principle of natural justice. It appears that the learned Tribunal has not considered and discussed about such a relevant and important issue in its order. In the present case, two sets of evidence were produced before the learned Tribunal. Therefore, while considering the veracity of the said document the Tribunal is also required to be considered as to whether the said documentary evidence produced by the respective party alongwith supporting affidavit of an authorized person or not. Since there are serious disputed question of fact the learned Tribunal is also required to conduct requisite inquiry regarding correctness

and genuineness of the documents and if need be evidence can be recorded for the purpose before reaching to any conclusion as provided u/s 11 of the Jharkhand Education Tribunal Act, 2005. On perusal of the impugned order, it appears that the Tribunal has not properly followed the procedure and exercised powers prescribed u/s 11 of the Act and thereby failed to consider, evaluate and appreciate the evidence produced on record before it in accordance with law. Therefore, this Court is of the view that the matter is required to be remitted to the learned Tribunal for its reconsideration. Under the circumstances, orders passed in Case No. 39/09 (JET) and Review Case No. 3 of 2009 (JET) by the learned Tribunal are deserved to be quashed and set aside and accordingly, both the orders passed by the learned Tribunal are ordered to be quashed and set aside. The matter is remanded to the learned Tribunal for de novo consideration. The learned Tribunal shall provide opportunity to the respective parties for producing evidence if any shall hear them and pass afresh judgment and order after considering all the material produced before it. With the aforesaid observation and direction, this appeal is allowed.