

(2012) 07 JH CK 0097

Jharkhand High Court

Case No: A.C. (S.B.) No. 8 of 2008

Mata Prasad Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: July 4, 2012**Acts Referred:**

- Jharkhand Education Tribunal Act, 2005 - Section 15

Citation: (2012) 3 JCR 433 : (2012) 4 JLR 54 : (2012) 3 JLR 518**Hon'ble Judges:** P.P. Bhatt, J**Bench:** Single Bench**Advocate:** Atanu Banerjee, for the Appellant; A.K. Sahani and P.S. Ghosh, for the Respondent**Final Decision:** Allowed

Judgement

P.P. Bhatt, J.

Heard Learned Counsel for the appellant as well as Learned Counsel for the State. The present appeal is filed u/s 15 of the Jharkhand Education Tribunal Act, 2005 for issuance of appropriate writ, order or direction for setting aside the order dated 22.11.2007 passed by the learned President, Jharkhand Education Tribunal and the learned Administrative Member of Jharkhand Education Tribunal, Ranchi in Case No. 13 of 2007 (JET), whereby the learned Tribunal has rejected the application of the appellant with cost.

2. The brief facts of the case are as under :--

The appellant was appointed in PIITS Modern School, run by Christian Minority Gomia School Society which has permanent affiliation with the Central Board of Secondary Education, New Delhi, as a temporary teacher, vide Letter No. PMS/A/3141 dated 14.05.1990 and accordingly, he joined the service and after completion of probation period, his service was confirmed against the post of Assistant Teacher, vide Letter No. PMS/A/3142 dated 29.04.1992 with effect from 01.04.1992.

Thereafter, all of a sudden, the appellant came to know that his services has been terminated by Respondent No. 2 with effect from 26.06.2004. The appellant received a letter No. PMS/A/ 3069 dated 15.07.2004 for vacating the quarter because his service has been terminated by the school. Thereafter, the appellant sent a notice dated 25.08.2004 through his advocate to the respondents for reinstatement in service. The respondent replied the said notice through an Advocate, vide reply dated 03.09.2004. Thereafter, the appellant approached before the Assistant Labour commissioner, Bokaro for redressal of his grievance, but, according to the appellant, his grievance was not redressed. Thereafter, the appellant moved before this Court for quashing the Letter No. PMS/A/3069 dated 15.07.2004, whereby appellant was terminated from his service and forced to leave the quarter, but the same was also dismissed by this Court. Subsequent thereto, the appellant filed an application before the Jharkhand Education Tribunal on 13.04.2007 being Case No. 13 of 2007 and the same was dismissed on 22.11.2007.

3. Learned Counsel for the appellant submitted that being aggrieved and dissatisfied by the order of the JET, the appellant preferred appeal, before the Jharkhand High Court on the ground that no regular departmental proceedings were ever initiated or conducted before the termination of the petitioner, which was punitive in nature and, therefore, the order of termination and consequently asking the appellant to vacate the quarter is in clear contravention of the principles of natural justice.

4. Learned Counsel further submitted that no prior notice has ever been served upon the appellant before termination from the service. Even the appellant has not been given any opportunity of hearing before termination of service. The learned JET has failed to consider the vital issue with regard to the non-observance of principles of natural justice. Learned Counsel further submitted that the respondents have not acted fairly. On the one hand, they are submitting that the appellant has been terminated under Sec. 29(2) of CBSE Bye Laws on account of reduction of class, but the respondents have not brought on record any material to substantiate this plea/argument. Even, respondents are unable to show that on this count some other persons also have been terminated. This clearly shows that the appellant has been terminated with malafide intention and the plea of reduction of classes is raised only to justify their action. It is submitted that the appellant is terminated from service by way of penal action, therefore, the procedure provided for imposing major penalty should have been followed. Learned Counsel has referred provision 47 of Bye Laws of Central Board of Secondary Education which provides for procedure for imposing Major Penalty.

5. It is submitted that such procedure has not been followed in the instant case.

6. Learned Counsel for the respondents submitted that before the Jharkhand Education Tribunal, the appellant had never challenged the termination and his prayer was confined only to the extent of seeking protection against vacating of

quarter, therefore, the order of termination can never be challenged at this stage. It was further contended that the appellant has accepted the cheque of Rs. 18,476/- bearing cheque No. 3648382 dated 06.08.2004 in lieu of final settlement without protest. therefore, after acceptance of such money, his claim cannot survive by the Doctrine of Estoppel and waiver. It was further contended that as per service condition of the school, when the appellant is no more in service of the school, he cannot be allowed to retain quarter, therefore, the Tribunal has rightly rejected the claim of the appellant and relying on para-9 of the rejoinder affidavit filed by the appellant, Learned Counsel for the respondents stated that as the quarter was vacated much before the filing of application before the Tribunal, there was no question of challenging the same in substance. On the point of limitation, Learned Counsel submitted that the case was instituted by the appellant before the Jharkhand Education Tribunal, Ranchi in the year 2007, hence, that claim was time barred.

7. In reply to the submission advanced by the respondents, Learned Counsel for the appellant submitted that the termination order has been challenged in para-12 onwards of the memo of appeal. It was further submitted that the Tribunal has failed to consider the material aspect i.e. with regard to the violation of the principles of natural justice. The learned President of the JET has not recorded any finding about the principles of natural justice.

8. Considering the above mentioned rival submissions and on perusal of material on record and more particularly, it reveals from the reply of the legal notice given by the management that the termination was not simpliciter. The termination appears to be punitive in nature and, therefore, it would be necessary to hold a regular departmental enquiry before issuance of an order of termination as contained in Rule 47 of CBSE Bye-laws. The same is reproduced herein below :--

Procedure for imposing Major Penalty :

47. Procedure for imposing Major Penalty.--(1) No order imposing on any employee any major penalty shall be made except after an inquiry is held as far as may be, in the manner specified below :--

(a) The disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to employee and he/she shall be required to submit within such time as may be specified by the disciplinary authority but not later than two weeks, a written statement of his/ her defence and also to state whether he/she desires to be heard in person;

(b) On receipt of the written statement of defence, or where on such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if it considers it necessary to do so,

appoint an inquiry officer for the purpose;

(c) At the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry recording his findings on each of the charges together with the reasons thereof;

(d) The disciplinary authority shall consider the report of the inquiry and record its findings on each charges and if the disciplinary authority is of opinion that any of the major penalties should be imposed it shall :

(i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer:

(ii) Give him/her notice in writing stating the action proposed to be taken in regard to him/her and calling upon him/her to submit within the specified time, not exceeding two weeks, such representation as he/she may wish to make against the proposed action;

(iii) On receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the committee for its prior approval;

(iv) After considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty, which it proposes to impose on the employee and send its findings and decision to the committee for its approval and while doing so the disciplinary authority shall furnish to the employee all relevant records of the case including the statement of allegations, charges framed against the employee, representation made by the employee, a copy of the inquiry report, where such inquiry was made and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the committee.

9. Admittedly, in the present case, instead of following the prescribe procedure under CBSC rules three months' salary in lieu of notice as required under Clause 4 of the confirmation letter was paid to the appellant. I found no substance in the argument advanced by the respondents that they have followed the requisite procedure provided in clause 4 of the confirmation letter and paid three months salary in lieu of notice. For the purpose of deciding the present case the relevant provisions contained in CBSE Rules with regard to imposition of penalty in respect of disciplinary procedure are relevant therefore, the same should be followed. And as such there appears to be procedural laps or violation of principles of natural justice.

10. I found substance in the argument advanced by the appellant with regard to termination by way of penal action as well as non-holding of departmental enquiry

as contemplated under provision 47 of Bye Laws of Central Board of Secondary Education. It appears that termination is not simpliciter, on account of reduction of class/section.

11. I have perused the order passed by the Tribunal. The Tribunal has committed an error by confirming the action of termination by holding that the same is legal and valid. The Learned Tribunal has failed to consider the vital legal issues and facts of the case in its proper perspective. Having regard to the aforesaid facts and circumstances of the case, this Court is of the view that order passed by learned Jharkhand Educational Tribunal deserved to be set aside. Hence, the same is set aside. The appeal is allowed accordingly. The petitioner be reinstated in service without any back wages on the basis of principle of no work no pay. The respondents are at liberty to initiate disciplinary proceedings if the conduct of the petitioner so warrants by following requisite procedure laid down under the rules.