

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14543 of 2015

Upendra Ram, son of late Doman Ram, resident of Village + P.O. Ahiyapur, P.S. Mansoorchak, Dist. Begusarai, at present posted as Assistant Teacher (graduate trained), in Govt. upgraded Middle School Bhawanipur, Anchal-Mansoorchak, Dist. Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The District Education Officer, Begusarai.
5. The District Programme Officer (Establishment), Begusarai.
6. The Block Education Officer, Begusarai Sadar, Dist. Begusarai.
7. The Block Education Officer, Mansoorchak, Dist. Begusarai.

----- Respondents

8. Shri Mahabir Rajak, son of Shiv Khelawan Rajak, resident of Village Gairangano, P.O. Mansoorchak, Begusarai, at present posted as Assistant Teacher (graduate trained), in Govt. upgraded Middle School, Bhawanipur, Anchal- Mansoorchak, Dist. Begusarai.
9. Binay Kumar Paswan @ Ram Binay, at present Block Resource Person, Mansoorchak Block, Dist. Begusarai.

.... Private Respondents

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Adv.

For the Respondent/s : Mr. Rajesh Singh, GP-16

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 14-09-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads

as follows:-

“1(i) For issuance of an appropriate writ in the nature of certiorari for quashing the office order as contained in memo no. 1096 dated 10.8.2015 issued under the signature of the District Education Officer, Begusarai, by which the petitioner has been suspended and kept under the departmental proceeding as per Rule 10(1)



the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005 without having any jurisdiction and also contrary to the relevant rules and also without appreciating the facts and circumstances and also for quashing the consequential order as contained in memo no. 336 dated 11.8.2015 issued under the signature of the Block Education Officer, Mansoorchak by which he has directed the petitioner to handover the charge of the school to the Incharge headmaster and further for quashing the office order as contained in memo no. 283 dated 13.7.2015 (Annexure-2) issued by the Block Education Officer, Mansoorchak by which Shri Mahabir Rajak (the private respondent no.8) has been permitted to work as incharge headmater of upgraded middle school Bhawanipur and the petitioner has been directed to handover the chare to Shri Rajak (Private respondent no.8) within 24 hours.

- (ii) For issuance of an appropriate writ in the nature of prohibition by restraining the respondent authorities concerned to not make hindrance in proper functioning of the petitioner in Govt. upgraded Middle Schol Bhawanipur, Anchal-Mansoorchak, District Begusarai as he has been suspended on flimsy grounds.*
- (iii) For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to revoke the suspension of the petitioner and to allow him to continue in Govt. upgraded Middle School Bhawanipur, Anchal-Mansoorchak, District-Begusarai with all consequential benefits and also to pay the salary since July, 2015 till date and month to month salary.”*



3. Mr. Umesh Kumar Mishra, learned counsel for the petitioner, in support of the aforementioned prayer, has basically concentrated on the aspect that the impugned order of suspension of the petitioner dated 10.8.2015 is on account of malafide of the Block Education Officer, Mansoorchak, Begusarai. In this regard, he had relied on a representation filed by the petitioner on 25.7.2015 to the Block Development Officer, Mansoorchak wherein he had sought to question the decision of the Block Education Officer, Mansoorchak dated 13.7.2005 displacing him from the post of Acting Headmaster by bringing one Mahabir Rajak, respondent no.8 on the said post earlier occupied by the petitioner. Mr. Mishra, in fact, has also gone to rely on Annexure-1, the order of the director, Primary Education of the Education Department and the consequential seniority list to contend that the petitioner was admittedly senior to the respondent no.8 and, therefore, the decision of the Block Education Officer to displace him from the post of Acting Headmaster was with a view to satisfy the personal grudge, inasmuch as, the petitioner did not carry out the wishes of the Block Education Officer as conveyed to him by one Binay Kumar Paswan, Block Resource Person who had asked the petitioner to purchase the furniture from the agency allegedly owned by the Block Education Officer. Finally, Mr. Mishra has also submitted that the impugned order of suspension has been passed

without giving any show-cause notice to the petitioner.

4. Learned counsel for the State, on the other hand, has submitted that all these are defence of the petitioner which can be very well looked into in the contemplated departmental proceeding as is also proposed in the impugned order of suspension dated 10.8.2015. He has also submitted that there would be no concept of giving any show-cause notice as against the order of suspension.

5. In the considered opinion of this Court, the order of suspension pending departmental proceeding in terms of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules is capable of being assailed ordinarily on two grounds, namely, the jurisdiction of the authority passing such order or the malafide.

6. Learned counsel for the petitioner does not question the jurisdiction of the departmental proceeding which had placed the petitioner under suspension by the impugned order. He however has raised a question of malafide but, then, the question would be malafide by whom? It is not that the department proceeding was carried in malice against the petitioner. As a matter of fact, the petitioner has also not impleaded the Block Education Officer by name and, therefore, whatever action of malice is sought to be interfered in view of the representation filed by the petitioner before the Block Development Officer can never be sufficient proof of the



plea of malafide. If the Block resource person had asked the petitioner to fall in line with the wishes of the Block Education Officer, it was more than necessary for him to make the Block Education Officer party by name. This aspect of the matter in fact already stands settled by the judgment of the Apex Court in the case of *S. Pratap Singh Vs. The State of Punjab* reported in *AIR 1964 SC 72* which always has been followed by the Apex Court, inasmuch as, it is also a settled principle of law that a person against whom allegation of malice is made must be made party by name in order to enable him to answer the charge of malafide. In the present case, there being no allegation of malafide against the authority who had passed the order of suspension, this Court would find that the plea of malice has been only raised which is known as a last refuse of the loosing litigant.

7. The issue that the order of suspension was passed without giving show-cause notice to the petitioner would also be of no avail, inasmuch as, an order of suspension under the 2005 Rules is not required to be passed after giving a show-cause notice. Such suspension, being interim in nature, either due to contemplated departmental proceeding or pending departmental proceeding, this Court would not find any error in the impugned order of suspension only because it was passed without giving show-cause notice to the petitioner.



8. Finally as with regard to the dispute of seniority between the petitioner and the respondent no.8, namely, Mahabir Rajak and the charge of the acting Headmaster of the school being directed to be handed over to the respondent no.8 by the petitioner can never be gone into at this stage while examining the validity and the correctness of the impugned order of suspension. These are the matter of defence of the petitioner which he can raise by way of his defence in his written statement of defence to be filed by him after framing and service of the charge-sheet.

9. Thus, for the reasons indicated above, this Court is not inclined to interfere with the impugned order of suspension which was passed on 10.8.2015. Nonetheless, as per the requirement of rule, Rule 9(7) of the 2005 Rules, the memo of charge against the petitioner has to be issued within a period of three months and, therefore, this Court would direct the District Education Officer to ensure that the departmental proceeding is not unnecessarily kept pending. The memo of charge to the petitioner, therefore, will be issued as early as possible preferably within a period of one month from the date of receipt of this order by the District Education Officer, Begusarai.

10. It also goes without saying that if the petitioner would file his written statement of defence, the departmental enquiry shall be expedited so that the petitioner is not kept under suspension for an

indefinite and undue long period.

11. When this part of the order has been dictated, Mr. Mishra comes out to make a submission that this Court should direct for payment of the subsistence allowance to the petitioner.

12. Firstly, this Court is not required to say so because the order of suspension itself clearly mentions of the admissibility of the payment of subsistence allowance to the petitioner during period of suspension. Secondly, this Court would must clarify that the payment of subsistence allowance is not automatic in 2005 Rules, inasmuch as, the suspended employee has to remain present in the headquarters fixed under the order of suspension and, therefore all that can be said in absence of relevant pleadings in this writ application is that if the petitioner remains present in the headquarter fixed during period of suspension, the District Education Officer, Begusarai shall ensure that the subsistence allowance of the petitioner is paid as per the requirement of 2005 Rules r/w Rule 96 of the Bihar Service Code.

13. Subject to the aforementioned observation and direction, this application must fail and is hereby dismissed.

(Mihir Kumar Jha, J)

Rishi/-

U			
---	--	--	--