

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20838 of 2014

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Arun Kumar Singh son of late Haribans Nrayan Singh, resident of village Sahiyardi, P.O. and P.S.- Rosera, District Samastipur at present posted as Assistant Teacher Utkramit Middle School Dhobal Hindi, P.S. Baniyapur, District Saran at Chhapra

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Primary Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Govt. of Bihar, Patna
3. The Collector, Saran at Chhapra
4. The District Education Officer, Chhapra
5. The District Programme Officer, Chhapra
6. The Block Education Officer, Baniyapur, District Saran at Chhapra
7. The District Programme Officer, Banka

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratan Kumar Kumar, Advocate.
For the Respondent/s : Mr. Sunil Kr. Mandal, SC-24.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 24-07-2015 Heard learned counsel for the parties.

2. Having regard to the fact that the petitioner is aggrieved by an order of suspension dated 10.10.2014 and the fact that such order of suspension has been passed by the competent authority and that too in terms of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the remedy for the petitioner against such order of suspension either on the part or otherwise for assailing such order of suspension will be only before the competent authority who has placed the petitioner under suspension by directing him to recall his order or before the appellate authority who definitely will have a right to review the

merits of the suspension order.

3. Learned counsel for the petitioner has submitted that as a matter of fact the grounds taken in the order of suspension is ill-founded inasmuch as he had already handed over the charge which stands supported by the documents.

4. Learned counsel for the State, on the other hand, has contended that after handing over the charge by the petitioner, he has embezzled a sum of more than Rs. 4,00,000/- and in fact, the order of suspension talks about embezzlement of Rs. 4,02,700/-.

5. In the considered opinion of this Court, order of suspension cannot be interfered with in exercise of power under Article 226 of the Constitution of India on the ground as to whether the petitioner has embezzled the amount or not which is a subject matter of departmental inquiry. The order of suspension, in fact, says that Prapatra-K (memo of charge) was to be issued against him. It is however the case of the petitioner that memo of charge has not been issued against the petitioner till date.

6. In that view of the matter, this Court would not like to place reliance on an earlier report of the Block Education Officer giving his opinion on 10.03.2014 (Annexure-4) that the petitioner had not committed any misappropriation. In this regard it has to be kept in mind that the order of suspension dated

10.10.2014 has been passed after receipt of this report dated 10.03.2014.

7. None-the-less, as the petitioner is very confident that the report of the Block Education Officer is correct, he may still approach the District Education Officer either for withdrawal of the suspension order or completion of the departmental proceeding.

8. If the petitioner approaches the District Education Officer, it shall be the duty of the District Education Officer to take a decision firstly with regard to holding the departmental proceeding and if from the explanation furnished by the petitioner, he would be satisfied that the petitioner has not committed any misappropriation and no departmental proceeding, therefore required to be initiated, the order of suspension would be withdrawn.

9. On the other hand, if it is found that the charges against the petitioner is correct and needs to be inquired into in view of the denial by the petitioner, such decision will also be communicated to the petitioner as well as to the inquiry officer for completing the inquiry within a period of six months from the date of such order passed by the District Education Officer.

10. It goes without saying that in case, the

departmental inquiry is held against the petitioner, the final order will also be passed within a period of three months from the date of submission of inquiry report by the inquiry officer.

11. The District Education Officer, being the disciplinary authority, must ensure that the final order against the petitioner with regard to continuation of suspension of the petitioner as also the charges against him of financial irregularity, is taken within a maximum period of nine months in the manner as indicated above.

12. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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