

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11406 of 2016

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Sunil Kumar Singh, son of Sri Baleshwar Prasad Singh, resident of village Rasisa,
P.S. Aungari, District Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Education Officer, Patna.
6. The Bihar State Food and Civil Supply Corporation Ltd. through its Managing Director, Patna.
7. The District Manager, Patna Food and Civil Supply Corporation Ltd.
8. The Additional Collector (Departmental Enquiry) cum Conducting Officer, Patna.
9. The District Education Officer, Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Advocate with
Mr. Vipin Kumar, Advocate

For the Respondent-State: Mr. Deepak Sahay Jamuar, AC to AAG-4

For the BSFC : Mr. Aditya Prakash Sahay, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-08-2016

I have heard Mr. P.K. Shahi, learned Senior Counsel for the petitioner and Mr. Deepak Sahay Jamuar, A.C. to A.A.G.-4 for the State.

With the consent of the parties this matter has been taken up with a view to its final disposal at the stage of admission itself.

The petitioner is aggrieved by the order bearing Memo No.853 dated 14.12.2015 of the Director, Primary Education, Respondent No.3 herein whereby the petitioner has been put under suspension.

Rather a short argument has been advanced by Mr. Shahi,



learned Senior Counsel appearing for the petitioner to contest the issue. He submits that the charge-sheet in the case was served on the petitioner on 19.8.2015 charging him of causing pecuniary loss to the Government by his act of negligence and dereliction of duty which, according to the Director, Primary Education, would amount to misconduct in terms of Rule-3.1 (I, II and III) of the Bihar Government Servant Conduct Rules, 1976 (hereinafter referred to as 'the Rules'). He submits that the Director, Primary Education did not think it proper to suspend the petitioner rather a show cause was asked which was received by the petitioner only on 2.9.2015 and which was responded to by the petitioner immediately on 7.9.2015 vide Annexure-5. He submits that since the charge memo itself was served on the petitioner after 31.8.2015 hence the delay. He further submits that almost four months thereafter that the order of suspension was passed and the reason assigned is that the petitioner has failed to file his reply though the reply was filed on 7.9.2015 and which fact is not denied by the respondents in the counter affidavit.

Learned counsel with reference to the statement made in the counter affidavit has submitted that a mere appointment of an Enquiry Officer and the Presenting Officer, in the circumstances would not justify the continuation of the petitioner under suspension for the past more than 7 months. Learned senior



counsel has referred to a judgment of the Supreme Court since reported in **2016(1) PLJR (SC) 461 (Prem Nath Bali vs. Registrar, High Court of Delhi)** and with particular reference to the opinion of the Supreme Court present at paragraphs-31 to 33 he submits that the respondents cannot keep a delinquent in a continued suspension for an outer limit in this regard has been fixed for completion of the proceeding itself at six months extendable up to a year.

Contesting the argument of Mr. Shahi, learned senior counsel appearing for the petitioner it is the argument of Mr. Jamuar, learned State Counsel that it is a case of financial loss caused by the petitioner and which amounts to misconduct. He submits that since now vide order bearing memo No.435 dated 2.5.2015 the Additional Collector, Patna has been appointed as Enquiry Officer while the District Programme Officer (Establishment), Patna has been appointed as the Presenting Officer by the Director, Primary Education, a copy of which is present at Annexure-A to the counter affidavit and who has opined that the enquiry report be submitted within 45 days, the same would be concluded without any unnecessary delay.

I have heard learned counsel for the parties and I have perused the records.

The case in hand is a case of a departmental proceeding



held at leisure. In a leisure manner a charge was served on the petitioner on 19.8.2015 which did not even conceive of suspending the petitioner as there is no such reflection in the covering letter present at Annexure-4. As stated by the petitioner the charge memo was served on him belatedly on 31.8.2015 but no sooner it was served that he filed his reply on 7.9.2015, a copy of which is present at Annexure-5 and the receipt whereof is not denied by the respondents. Nothing happens thereafter. The respondents did not even bother to appoint an enquiry officer or a presenting officer and to cover their own lapse that the order of suspension is passed almost four months after the issuance of charge vide memo bearing no.853 dated 14.12.2015 impugned at Annexure-6 and the only ground that is assigned by the Director, Primary Education for suspending the petitioner is that he has failed to file his response. There is no change in the circumstances in between issuance of charge memo and the order of suspension except for the opinion of the Director, Primary Education that since no response was filed by the petitioner, it amounts to confirmation of charges. Such confirmation of guilt is an absurdity for even if it is presumed that the petitioner did not file his response timely, the charges are yet to be proved in a duly constituted proceeding. There is no such finding. The non seriousness of the respondents is apparent from the fact that it has taken them almost 10 months to appoint an

enquiry officer from the date of issuance of charge memo and 5 months after the order of suspension. In fact, even though a direction to conclude the proceedings within 45 days is present in the order dated 2.5.2016 but it has remained a paper transaction for according to the petitioner there is no progress in the proceedings.

Having heard learned counsel for the parties and considering that the respondents did not choose to suspend the petitioner while serving the charge memo on 19.8.2015 rather the reason assigned in the order of suspension is that the petitioner has not filed his reply to the charge memo, which is on record at Annexure-5 and not disputed; that a period of more than 11 months has passed since the charge memo was issued on 19.8.2015 and taking into consideration the opinion of the Apex Court in the judgment relied upon by the learned Senior Counsel, the order of suspension bearing memo no.853 dated 14.12.2015 is unsustainable for it is an abuse of powers by the Director, Primary Education and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR	
CAV DATE	
Uploading Date	16.8.2016
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