

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19072 of 2015

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1. Ramadhar Yadav, Son of Late Satyanarayan Yadav, resident of Village & P.O.- Ugahani, Police Station- Chanari, District- Rohtas at Sasaram.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, The Principal Secretary, Education Department, Bihar.
3. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
4. The Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna.
5. The Regional Deputy Director, Patna Division, Patna.
6. The Regional Deputy Director, Tirhut Division, Muzaffarpur.
7. The District Education Officer, Bhojpur at Ara.
8. The District Superintendent of Education, Sitamarhi.
9. The District Education Officer, Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Vindhyachal Singh, Advocate
 Mr. Satya Prakash, Advocate

For the Respondent/s : Mr. GP1

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

4 06-05-2016 At the time of incident, the petitioner was posted as Block Education Extension Officer at Bathnaha. He was departmentally proceeded for certain acts of omission and commission. On conclusion of the enquiry, the Enquiry Officer submitted findings of guilt. The Principal Secretary, Education Department on consideration of the enquiry report, passed order of dismissal from service.

The petitioner has challenged the order of punishment as



well as impugned proceedings on more than one grounds. He submits that the power of disciplinary authority has been exercised by the Principal Secretary, Education Department, who would be the Appellate Authority. He next submits that the findings of the Enquiry Officer are based on the opinion of the Conducting officer which is also not permissible in law.

Learned State counsel has justified the impugned action. He submits that the petitioner was arrested in trap case while accepting bribe for which criminal prosecution is already going on. He submits that an officer superior to disciplinary authority/appointing authority does not lack jurisdiction to pass an order of punishment.

I have heard learned counsel for the parties.

The writ application would succeed on more than one score. A detailed hand note has been prescribed for regulation of departmental proceeding. The role of the conducting officer and presenting officer has been defined. The role of presenting officer is limited to tendering of documents on which the prosecution relies. It was not proper for an Enquiry Officer to seek opinion of the presenting officer on the issue. Similarly, it is not for the presenting officer to give his opinion and advice to Conducting



Officer to make recommendation in the enquiry. As the enquiry officer has relied upon the opinion of the Presenting Officer in coming to a conclusion, the same would not be sustainable in law and is liable to be set aside on that score alone. Besides this, it is not in dispute that the Director, Education being the Appointing Officer would be the disciplinary authority and the Principal Secretary, Education Department who has passed the original order of punishment, would be the Appellate Authority. In my view, if an Appellate Authority exercises jurisdiction, which ought to be exercised by the disciplinary authority first, the same would amount to denial of fair opportunity to a delinquent to challenge the findings and conclusion of the disciplinary authority. The petitioner is right in his submission that the issues involved in this case are squarely covered by the decision of this Court, dated 21.7.2014 passed in ***C.W.J.C. No.4031 of 2014 (Sriram Mahto v. State of Bihar & Ors).***

In the result, the writ application succeeds and the impugned order of punishment passed by the Principal Secretary, Education Department dismissing the petitioner from service is set aside. The Enquiry Officer would prepare a fresh report, without relying upon the opinion of the Presenting officer and forward the

same to the Disciplinary Authority for necessary action.

In the result, this writ application is allowed.

(Samarendra Pratap Singh, J)

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