

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14951 of 2013

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Shyam Bihari Singh, Son of Late Ram Jaisan Singh, resident of Village- Vijay Nagar, Rukunpura, Patna - Patna

.... Petitioner.

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar
2. The Secretary, Social Welfare Department, Govt. of Bihar, Patna
3. The Joint Secretary, Social Welfare Department, Govt. of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the Respondent/s : Mr. A.UJJWAL

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 11-05-2016

Heard learned counsel for the petitioner and the State.

2. The petitioner seeks quashing of the second show-cause notice, bearing letter no. 4931, dated 08.12.2011, passed by the Joint Secretary, Social Welfare Department, whereby he has been asked to give his response in respect of the findings recorded in the enquiry report.

3. An interlocutory application, bearing I.A. No. 7230 of 2015, has been filed seeking amendment in the prayer portion to include challenge to the order of removal dated 22.08.2013, contained in Annexure-21, passed by the Special Secretary, Social Welfare Department, Government of Bihar, Patna.

4. At the time of incident, the petitioner was posted as

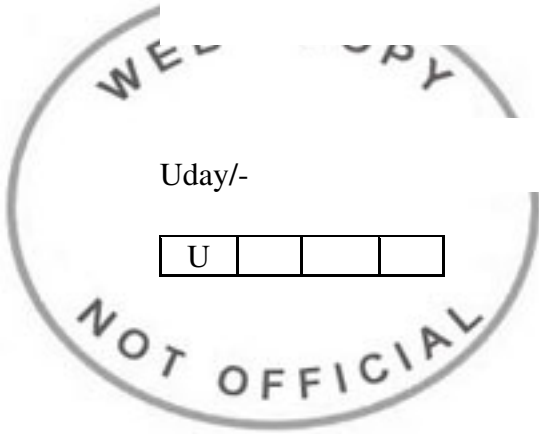
the Child Development Project Officer at Atri in Gaya District. He was departmentally proceeded for charges contained in Memo no. 5260, dated 29.08.2006. On conclusion of the enquiry, the enquiry officer substantially exonerated the petitioner of the charges. Thereafter the second show-cause notice was issued on 08.12.2011, whereafter punishment of removal has been accorded.

5. Learned counsel for the petitioner submits that the second show-cause notice is in teeth of decision of the Hon'ble Apex court in case of **Punjab National Bank & Ors Vs. Kunj Behari Misra**, reported in (1998) 7 SCC 84, which was re-affirmed in the case of **Lav Nigam Vs. Chairman and Managing Director, ITI Ltd. & another**, reported in (2006) 9 SCC 440.

6. The second show-cause notice is fit to be set aside for two reasons: Firstly; the second show-cause notice, dated 08.12.2011, does not state that the Disciplinary Authority disagrees with the finding of the enquiry officer, which is in favour of the petitioner. Secondly; the show-cause notice does not give any tentative reasons for disagreement. Thus, the second show-cause, dated 08.12.2011, is not sustainable in law and is accordingly set aside. The impugned order, dated 22.08.2013, contained in Annexure-21, passed by the Special Secretary, Social Welfare Department, Patna is too set aside. It will be open for the respondents to proceed afresh in

accordance with law.

7. The writ application is allowed.



(Samarendra Pratap Singh, J.)