

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14607 of 2014

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Malik Shafquat Imam S/o Late Md. Azhar Alam Resident of Mohalla Rahmatganj,
Masaurhi, P.O. and P.S. Masaurhi, District Patna. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Govt. of Bihar, Patna.
 2. District Programme Officer (Establishment), Patna.
 3. District Programme Officer (Training, Secondary Education, R.M.S.A. and
Literacy), Patna.
 4. Sub Divisional Education Officer, Masaurhi, Patna.
 5. Range Education Officer, Masaurhi, Patna.
 6. Block Education Officer, Punpun. Respondents
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Appearance :

For the Petitioner/s : Mr. Banwari Sharma, Advocate,
Mr. Shiv Kumar, Advocate and
Mr. Sahjanand Sharma, Advocate
For the Respondent/s : Mr. S.K.SINGH, AC to GA 1

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 02-05-2016

The petitioner seeks quashing of the order contained in
Memo no. 4277, dated 24.2.2014 of the District Programme Officer,
Patna, Annexure 5, whereby he has been dismissed from service.

2. I.A.No.565 of 2016 filed by the petitioner challenging
appellate order, dated 23.12.2015, affirming sentence of dismissal,
passed by the Regional Deputy Director of Education, Patna
Division, Patna (respondent no.7) is also taken on record.

3. The petitioner, an assistant teacher in the Middle
school, was deputed in the office of the Sub Divisional Education
Officer, Masaurhi for conducting Nagar Parishad Shiksha Niyojan,
2008 at the time of incident. One Triveni Sharma, a retired assistant



teacher, filed an application before the Superintendent of Police as well as Officer-in-charge, Vigilance Investigation Bureau, Patna on 10.6.2009 alleging that one Saukat Mian, assistant teacher, deputed in the office of the Area Education Officer, Masaurhi demanded Rs. 1500/- as gratification for favour of forwarding his application for withdrawal of provident fund and Group insurance amount. A trap was laid and on 16.6.2009 at about 4.30 PM, the petitioner was arrested by the Vigilance Investigation Bureau accepting bribe of Rs.2000/- from said Triveni Sharma which gave rise to Vigilance P.S.Case no.70 of 2009 dated 17.6.2009, u/s 7/13(2) read with sections 13(1)(D) of the Prevention of Corruption Act, 1988. Petitioner was also departmentally proceeded for demanding and accepting graft. The enquiry officer held the charge to be proved against the petitioner. After providing an opportunity of show cause, and not being satisfied with the explanation, the disciplinary authority inflicted punishment of dismissal from service, which order was affirmed in appeal vide order, dated 23.12.2015, passed by respondent no.7, Annexure 27 to the I.A.No. 565 of 2016.

5. The petitioner submits that the departmental proceeding has been conducted for the same charge for which the criminal case bearing Vigilance P.S.Case no.70 of 2009, dated 17.6.2009, u/s 7/13(2) read with sections 13(1)(D) of the Prevention of Corruption



Act, 1988, was also instituted. The departmental proceeding ought to have been stayed pending criminal prosecution, as the defence disclosed by him in the departmental proceeding may prejudice his defence in the criminal court. He submits that the prosecution should have examined at least some members of the Vigilance Investigation Bureau, who proposed or formed part of the trap team. The petitioner also submits that non-examination of these witnesses would vitiate the investigation. The petitioner has placed reliance upon orders, dated 29.2.2012, passed in CWJC No. 2162 of 2012, order, dated 9.10.2014 passed in CWJC No. 10227 of 2013, and order dated 21.7.2014, passed in CWJC No. 3895 of 2014. He next submits that no proper enquiry was conducted, in so much so, no witness was examined nor any relevant document was supplied to him by the presenting officer. The conducting officer himself looked into the documents and pronounced the verdict of guilt.

6. Learned counsel for the State submits that charges against the petitioner is grave, as he was arrested while accepting bribe from a retired teacher for favour of forwarding his papers concerning retiral benefits which he should have done in usual course of his duty. Furthermore, sufficient opportunity was given to him in the departmental proceeding to defend his case.

7. I have heard learned counsel for the parties.



8. In a departmental proceeding, strict rules of evidence may not apply. The charges have to be proved on a preponderance of probability. It is not every deviation in the course of the enquiry which shall vitiate it, unless prejudice is shown to have been caused. But if the deviation is of a nature which effectively deprives the delinquent an opportunity for defence at the appropriate stage, prejudice is writ large and need not be demonstrated.

9. This Court in case of Tej Narayan Singh Vs. State of Bihar and others, disposed of on 9.10.2014 stated that in case the respondents propose to punish an employee on the charge of graft, at least someone who was member of the graft team or associated with institution of Vigilance case, ought to have been examined. In the instant case, no member of the Vigilance Investigation Bureau was examined nor any document was tendered by the Conducting officer. There was no occasion for the delinquent to cross examine any witness. Situated thus, I am of the considered view that the enquiry was not conducted in accordance with law.

10. In the result, the enquiry report, order of punishment passed by the disciplinary officer as well as the appellate order are set aside.

11. As the petitioner has already filed his written

submission to the memo of charges, the enquiry officer would proceed from that stage itself. It is expected that the enquiry would be completed preferably within a period of four months from the date of receipt of this order. In the facts and circumstances, there would be no automatic reinstatement of petitioner and would continue to remain in suspension.

12. The writ petition is allowed this extent only.

(Samarendra Pratap Singh, J)

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