

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7999 of 2016

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Chandra Kishore Prasad Yadav, son of late Ganauri Yadav, resident of village Beldaha, P.S.-Chandi, P.O.-Noorsarai, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt of Bihar, Patna.
2. Principal Secretary, Education Department, Bihar, Patna.
3. Director Administration cum Addl. Secretary Education Department Bihar, Patna.
4. Regional Deputy Director of Education Saran, Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad
For the Respondent/s	:	Mr. Prabhat Kr.Singh, S.C.-12
For the State	:	Mr. Rishi Raj Sinha, S.C.-19
		Ms. Archana Prasad, A.C. to S.C.-19
		Mr. Avinindra Kumar Jha, A.C. to S.C.-19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-07-2016

Learned counsel for the petitioner is permitted to delete the name of the respondent no.3 from the memo of the parties during the course of the day.

Heard the parties and with the consent of the learned counsel representing the parties, the writ petition is being finally disposed of at the stage of admission itself.

The petitioner is aggrieved by the order of suspension bearing Memo No.446 dated 21.4.2016 passed by the Director, Administration –cum- Additional Secretary, Department of Education, Government of Bihar, Patna impugned at Annexure-1 to the writ petition. The petitioner holds a gazetted post of District



Education Officer and posted at Saran at Chapra in the district of Saran. Owing to certain allegations of misconduct that the petitioner has been suspended by the order impugned at Annexure-1 and being aggrieved he is before this Court.

The issue raised by Mr. Ram Hriday Prasad, learned counsel appearing for the petitioner to question the impugned order is that it is *de hors* the statutory rules under lying rule-9(1) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') inasmuch as it has not been passed either by the appointing authority nor the Director (Administration) –cum- Additional Secretary is vested with any such jurisdiction. A specific issue was framed by this Court to this effect vide order passed on 21.7.2016. A counter affidavit has been filed and which unfortunately is by an authority subordinate to the Director (Administration).

In my opinion, considering the nature of issues raised, the affidavit ought to have been filed by an authority superior to the Director (Administration). Paragraph-7 of the counter affidavit simply says that the order of suspension has the approval of the State Government. In my opinion a mere approval to a void order does not alter its status nor validates an illegal act.

The petitioner being a gazetted officer, the appointing



authority is the State Government and it is the State Government alone who can pass an order of suspension. Neither the order of suspension passed by the Director (Administration) impugned at Annexure-1 does reflect any such sanction nor the statement made in paragraph-7 of counter affidavit answers this issue nor there is any authorization on record.

In the circumstances discussed, the order of suspension bearing Memo No.446 dated 21.4.2016 passed by the Director (Administration) impugned at Annexure-1 not being the order of the State Government cannot be upheld and is accordingly set aside.

The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	05.08.2016
Transmission Date	