

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8138 of 2016

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Nawal Kishore Sharma S/o Sri Sakaldeo Singh Presently Posted as Headmaster in
Smt. Girja Kunwar High School, Masaurhi, Distt Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Education Department Govt. of Bihar, Patna.
4. The Director, Secondary Education Govt. of Bihar, Patna.
5. The District Education Officer, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr.Adv.
Mr. Rajeev Kumar Singh, Adv.

For the Respondent/s : Mr. Anirban Kundu, SC24

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-12-2016

Heard Mr. Rajendra Prasad Singh, learned Senior counsel for the
petitioner and Mr. Anirban Kundu, learned Standing Counsel No.24 for the
State.

The petitioner is aggrieved by the order of suspension dated
22.4.2016, a copy of which is impugned at Annexure 1 to the writ petition.

The issue raised by Mr. Singh, learned Senior Counsel appearing
for the petitioner, to question the order of suspension stands noted in the
order of this Court passed on 8.12.2016 and which is as follows:

" Two issues have been raised by Mr. Rajendra Prasad Singh,
learned senior counsel appearing for the petitioner to question
the suspension order, namely:

- (a) The appointing authority of the petitioner being the State
Government, the order of suspension having been passed
by the Director, Secondary Education is without



jurisdiction; and

- (b) In view of the provisions underlying rule 9(7) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') if a charge sheet is not filed within three months then the authorities have to revoke the suspension order and in the present case although a charge sheet has been filed but it is by an authority not vested with such jurisdiction inasmuch as it is issued by the District Education Officer as manifest from Annexure-4.

Mr. Singh thus with reference to a Full Bench judgment of this Court reported in 2009(1) PLJR 272 (The State of Bihar v. Gyan Kumar Ram), paragraph 19 submits that since the petitioner has moved this Court for revocation of suspension and yet no charge sheet is filed, even on this ground the suspension order has to go. Learned counsel refers to a judgment of the Supreme Court since reported in (2014)1 SCC 351 (Union of India v. B.V.Gopinath) in support of his proposition.

Although Mr. Anirban Kundu, learned Standing Counsel No.24 has relied upon a gazette publication of the State Government dated 4.11.1997 to submit that the Director, Secondary Education has been vested with such jurisdiction but in view of the stipulation present at the amended provision of rule 9(1)(ka), the order apparently is not of the State Government rather it is under the signature of the Director, Secondary Education.

As prayed by Mr. Anirban Kundu, learned Standing Counsel No.24 and by way of last indulgence let this matter be listed under the heading 'For Judgment' on 13th of December, 2016 with a view to its final disposal."



Reiterating his aforementioned submissions, it is the argument of Mr. Singh that since the charge sheet in question placed at Annexure 4 is not by the appointing authority, it does not have the sanction of law. He submits that since the petitioner has moved this Court after expiry of three months of suspension order for revocation of suspension and the charge sheet so framed does not stand the test of law, the case of the petitioner is covered by paragraph 19 of the Full Bench judgment. Learned Senior Counsel has also placed reliance on the judgment of the Supreme Court since reported in (2014)1 SCC 351 (**Union of India v. B.V.Gopinath**) to support that the appointing authority of the petitioner being the State Government, the power could not have been arrogated to himself by the Director to issue the suspension order.

The State Counsel was granted time to contest the issue raised and a supplementary counter affidavit has been filed today. Paragraph 7 of the supplementary counter affidavit seeks to support the impugned action by submitting that the proposal for suspension was mooted by the department and has been approved by the Hon'ble Minister but then it does not answer the issue as to how the order of suspension would partake the character of an order of the State Government in tune with Article 166 of the Constitution of India. A mere reference in the suspension order that it has the approval of the State Government would not make the order in question an order of the State Government until such time that it is expressed in the name of the Governor.

Even though Mr. Kundu has partially succeeded in justifying the



action initiated by mootng the proposal of suspension but in absence of a valid order of suspension passed by the State Government, the order of suspension impugned at Annexure 1 is neither sustainable on the issue of jurisdiction nor in view of stipulation present at Rule 9(7) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 since charge sheet so issued against the petitioner impugned at Annexure 4 again suffers from the same infirmity.

In the result, the suspension order bearing Memo No. 894 dated 22.4.2016, impugned at Annexure 1, cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed. The consequences shall follow.

The authorities concerned, however, shall not be precluded from taking corrective measures.

Surendra/-

(Jyoti Saran, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.12.2016
Transmission Date	NA

