

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11705 of 2017

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1. Md. Shabuddin son of Late Md. Lukman, resident of Mohalla - Babaji Ki Gali, Misasi Tola, P.S. - Phulwarisharif, Distt. - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Secondary Education, Department of Education, Government of Bihar, Patna.
3. The District Magistrate, District - Aurangabad.
4. The District Programme Officer (Establishment), District - Aurangabad.
5. The District Education Officer, District - Aurangabad.
6. The District Programme Officer (Secondary Education), District - Aurangabad.
7. The Block Development Officer, Block - Madanpur, District - Aurangabad.
8. The Block Education Officer, Block - Madanpur, District - Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh

For the Respondent/s : Mr. A.R.Pandey A.A.G. 15

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 16-11-2017 Heard Mr. Ashok Kumar Choudhary, learned counsel

appearing on behalf of the petitioner and the learned A.C. to

A.A.G. 15 for the State.

The petitioner has filed this writ petition for the
following reliefs:

- (i) To quash the order of suspension as contained in

Memo No.623 dated 31.03.2017 issued by the

District Programme Officer(Establishment),

District-Aurangabad whereby and whereunder



the petitioner has been put under suspension as the same is bad in law and passed in gross violation of the statutory provisions as well as in contradiction to the law laid down by the Hon'ble Apex Court.

- (ii) To direct the respondents to put the departmental proceeding and Memo of Charge issued to the petitioner as contained in Memo No.327 dated 16.04.2017 issued by the District Programme Officer(Establishment), District-Aurangabad in abeyance till the Special Case No.17/17 is finally decided.
- (iii) To give a direction upon the respondents to give the petitioner a posting commensurate to his stature and to pay entire arrears of salary and other consequential benefits for the period of suspension of the petitioner.
- (iv) To pass any other order/orders in shape of a consequential relief to which the petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand.



Mr. Ashok Kumar Choudhary, the learned counsel for the petitioner submits that Vigilance P.S. Case No.22 of 2017 was registered on 27.03.2017 under Section 13(2) read with Section 13(1) of the Prevention of Corruption Act and raid was also conducted. During the course of raid, it transpired that the petitioner was found in possession of the property worth Rs.1,29,87,808/-. The income of the petitioner from legitimate source during the aforesaid period is only Rs.47,34,000/- and, therefore, the petitioner was found in possession of the disproportionate assets worth Rs.82,53,808/-. Since the petitioner was arrested, petitioner was also put under suspension vide order dated 31.03.2017 as contained in Memo No.623. It is further submitted that chargesheet had already been served. The learned counsel for the petitioner further submits that on the same set of facts, criminal case is also pending. The departmental proceeding should have been stayed in view of the judgment reported in **(1999)3 Supreme Court Cases 679(Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.)** in which it has been held that where criminal case as well as departmental proceeding both are pending on the same set of evidence and there is a complicated question of facts, the departmental proceeding should be stayed but in the present case, I find the petitioner is found in possession



of huge wealth disproportionate to his known source of income and in such case, in my view, the departmental proceeding should continue. Since the memo of charges is already served on the petitioner, the respondents are directed to conclude the departmental proceeding within eight months from the date of receipt of this order.

It has also been stated that the petitioner was put under suspension under the Bihar Service Code. It appears that it is merely a typographical error because after enactment of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, the petitioner shall be suspended and disciplinary proceeding shall be conducted in accordance with the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005. Mere mentioning of wrong provision does not vitiate the order.

Accordingly, I dispose of this writ petition with a direction to the respondents to conclude the departmental proceeding initiated against the petitioner within eight months from the date of receipt of this order.

The writ petition stands disposed of, as aforesaid.

(Prabhat Kumar Jha, J)

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