

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15473 of 2014

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1. Basudeo Paswan son of late Nandi Paswan resident of village- Alpura, P.O. Tajpur, P.S.- Rudrapur, District- Madhubani, at present Block Education Officer, Sarairanjan, Anchal- Sarairanjan, District- Samastipur Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The District Magistrate, East Champaran at Motihari
4. The District Magistrate, Samastipur
5. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
6. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga
7. The Conducting Officer-cum-Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
8. The District Education Officer, East Champaran at Motihari
9. The District Education Officer, Samastipur
10. The District Programme Officer (Establishment), East Champaran at Motihari
11. The District Programme Officer (Establishment), Samastipur
12. The Presenting Officer-cum-the then District Superintendent of Education, East Champaran at Motihari (Now the District Programme Officer (Establishment), East Champaran at Motihari
13. The District Treasury Officer, Samastipur Respondents

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Appearance :

For the Petitioner : M/S Yogendra Mishra, Umesh Kumar Mishra & G.C. Singh, Advs.

For the Respondents : Mr. Mahendra Prasad Verma & Syed Iqbal Ahmad, AC to SC XX

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 17-11-2017

Heard both sides. The Director, Primary Education, Bihar, Patna, is present in Court. This writ petition is disposed off at the stage of admission with the consent of the parties as the pleadings are complete.

2. The petitioner has filed this writ petition for quashing the order, dated 10.07.2014, as contained in Memo No. 897, issued under the signature of the Director, Primary Education, Bihar, Patna, by which the petitioner has been dismissed from service. The petitioner further prayed for quashing the enquiry report, dated 30.08.2007, as contained in letter, dated 31.08.2007, issued under the signature of the



Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, and for other consequential relief.

3. The petitioner is a member of Bihar Education Service duly appointed by the Government of Bihar on recommendation of the Bihar Public Service Commission. While, the petitioner was posted as Block Education Officer, Adapur, East Champaran at Motihari, on 05.02.2007 on the report of one Gopi Chand Ram a raid was conducted and the petitioner was apprehended while accepting bribe. Vigilance Case No. 17 of 2007 was registered on 11.02.2007 under Section 7 read with sections 23(1)d and 13(2) of the Prevention of Corruption Act, 1988. The petitioner was put under suspension on 13.03.2007 on the ground of his being arrested by the Vigilance Department and a departmental proceeding was initiated vide order, dated 11.04.2007, as contained in Memo No. 330. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, was appointed as conducting officer and the District Superintendent of Education, East Champaran at Motihari, was appointed as presenting officer. The petitioner filed his show cause before the Enquiry Officer. The Enquiry Officer submitted his report and on such the Director, Primary Education, Bihar, Patna, vide his order, dated 20.04.2011, as contained in Memo No. 468 (Annexure 7), passed the following punishments against the petitioner :

- (a) Censure for the year 2006-2007,
- (b) Stoppage of three increments with cumulative effect
- and
- (c) The question of payment of salary during the period of



suspension shall be passed after the disposal of the vigilance case.

4. The suspension of the petitioner was revoked. Thereafter, the Director, Primary Education, Bihar, Patna, again, vide order, dated 03.03.2014, as contained in letter no. 343, issued show cause notice to the petitioner that the petitioner committed misconduct under Rule 3(1) (I, II, III) of the of the Bihar Government Servants Conduct Rules, 1976. The notice is said to have been issued under the rules read with Rule 18(2)(3) Rules 28 and 29 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005. The petitioner gave his show cause (Annexure 9) and the Director, Primary Education, Bihar, Patna, vide his order, dated 10.07.2014, as contained in Memo No. 897, dismissed the petitioner from service.

5. Sri Yogendra Mishra, the learned counsel, appearing for the petitioner, submitted that the Director after having perused the enquiry report (Annexure 7) inflicted major punishments of stoppage of three increments with cumulative effect. Thereafter, the Director, Primary Education, Bihar, Patna, has got no power to review the order. Rule 18(1) of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005, says that upon receipt of the enquiry report the disciplinary authority may after perusal of the enquiry report, remit the case to the Enquiry Officer for further enquiry, if the Enquiry Officer did not hold enquiry on any charge and recorded any finding. Rule 18(2) of the CCA Rules, 2005, says that the disciplinary authority upon receipt of the enquiry report under Rule 17[23(i)(ii)] of the CCA Rules,



2005, may differ with the findings of the Enquiry Officer and record his own opinion on the basis of the evidence available on record and, thereafter, the disciplinary authority shall ask second show cause along with the point of his difference from the enquiry report. Rule 18 of the CCA Rules, 2005, does not empower the Director to review or revise the order passed by the earlier Director.

6. On the other hand, Mr. Mahendra Prasad Verma, learned Assistant Counsel to Standing Counsel XX filed counter affidavit on behalf of respondent no. 2 and submitted that the respondent-Director, Primary Education, Bihar, Patna, stated in paragraph 15 and onwards that the Director is competent to review the order in view of the power envisaged under Rules 28 & 29 of the CCA, Rules, 2005.

7. On the basis of submission of both the sides only question arises for consideration as to whether the Director, Primary Education, Bihar, Patna, who had earlier issued Annexure 7 inflicting major punishment of withholding three increments with cumulative effect against the petitioner can review or revise his own order taking resort to Rule 18 read with Rules 28 and 29 of the CCA Rule, 2005.

8. I think it proper firstly to reproduce Rules 28 and 29 of the Bihar Government Servant (Classification, Control and Appeal) Rule, 2005, which are as follows :

“28 : **Revision** – (1) Notwithstanding anything contained in these Rules –(i) the Government, or
(ii) the head of a department directly under the Government, in the case of a Government servant serving in a department or office, under the control of such head of a department, or



(iii) any other authority specified in this behalf by the Government by a general or special order, and within such time as may be prescribed in such general or special order, may at any time within six months of the date of the order proposed to be revised, either on his or its own motion or otherwise call for the records of any inquiry and revise any order made under these Rules or under the Rules repealed by the Rule 32 (from which an appeal is allowed but from which no appeal has been preferred or from which no appeal is allowed), after consultation with the Commission where such consultation is necessary, and may –

- (a) confirm, modify or set aside the order, or
- (b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or
- (c) remit the case to the authority, making the order or to any other authority, directing such authority, to make such further inquiry as he may consider proper in the circumstances of the case, or
- (d) pass such other orders as it may deem fit :

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (vi) to (x) of Rule 14 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed without an inquiry in the manner laid down in Rule 17 and after giving a reasonable opportunity to the Government Servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Commission where such consultation is necessary :

Provided further that no power of revision shall be



exercised by the head of the department, unless—

- (i) the authority which made the order in appeal, or
 - (ii) the authority to which an appeal would lie, where no appeal has been preferred is subordinate to him.
- (2) No proceeding for revision shall be commenced until after
- (i) the expiry of the period of limitation for an appeal, or
 - (ii) the disposal of the appeal, where any such appeal has been preferred
- (3) An application for revision shall be dealt with in the same manner as if it were an appeal under these Rules.

“29 : **Power to relax time limit and to condone delay** :-- Save as otherwise expressly provided in these Rules, the authority competent under these Rules to make any order may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified in these Rules for anything required to be done under these Rules or may condone any delay.”

9. From perusal of the second proviso of Rule 28 which gives power of revision to the Government and the Head of the Department clearly says that (i) no power of revision shall be exercised by the Head of the Department unless the authority which made the order and (ii) the authority to which an appeal would lie, where no appeal has been preferred is subordinate to him. Admittedly, the Director, Primary Education, Bihar, Patna, is not the head of the Department. The Head of the Department is the Principal Secretary, Education, Bihar, Patna. The Director, Primary Education, Bihar, Patna, upon receipt of the enquiry report vide, order, dated 20.04.2011, as contained in Memo No. 4568 (Annexure 7) inflicted major punishment by withholding three increments of the petitioner with



cumulative effect and, thereafter, his successor, the Director, Primary Education, Bihar, Patna, after lapse of three years issued another notice to the petitioner for revision of the aforesaid order.

10. As has already been stated that the Director, Primary Education, is not empowered to revise or review of his own order and, therefore, the order, dated 10.07.2014, as contained in Memo No. 897, issued by the Director, Primary Education, Bihar, Patna, by which he revised or reviewed his own order and dismissed the petitioner from service is without jurisdiction and the same is not sustainable.

11. In the result, the writ petition is allowed. The order, dated 10.07.2014, as contained in Memo No. 897, is set aside.

(Prabhat Kumar Jha, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.01.2018
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