IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11890 of 2016

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1. Kamendar Kumar Kamesh Son of Gopal Sharan Singh Resident of Village - Chhta, P.S. - Masaurhi, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar though the Principal Secretary Department of Education Government of Bihar, Patna
2. The Director Primary Education Bihar, Patna.
3. The Director (Administration) cum Additional Secretary Department of Education, Bihar, Patna.
4. The Regional Deputy Director of Education Purnea
5. The District Education Officer Purnea
6. The District Programme Officer (establishment) Purnea

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rajiv Roy, Adv.
For the Respondent/s : Mr. Chandra Shekhar Singh, A.C. to GA-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 27-07-2017

Heard Mr. Rajiv Roy, learned counsel for the petitioner and Mr. Chandra Shekhar Singh A.C. to G.A.1 for the State.

The issues raised and contested in the present writ petition stands noted in the order dated 20.2.2017 and briefly stated is that the petitioner a Block Education Officer, Block Amaur in the District of Purnea filed the present writ petition questioning his suspension order dated 24.2.2016 impugned at Annexure-1. While the writ petition remained pending that an enquiry was held and order of penalty was passed by the Director, Primary Education vide order bearing Memo

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No.991 dated 9.11.2016, a copy of which is impugned at Annexure-1 to I.A.No.8812 of 2016. The prayer made by learned counsel for the petitioner to question the order of penalty has been allowed by this Court vide order passed on 20.2.2017.

Mr. Roy learned counsel for the petitioner while agreeing that there is an appellate remedy available to the petitioner, has raised a pure question of law to question the penalty order while submitting that the order is in violation of the rule 18(2) and (3) of the Bihar Government Servant (Classification, Control and Appeal)Rules, 2005 (hereinafter referred to as 'the disciplinary rules') inasmuch as even though the Enquiry Officer has exonerated the petitioner of the charges vide his report present at Annexure-2, yet the Director, Primary Education in the capacity of the disciplinary authority has failed to discharge the statutory obligation cast upon him to issue a disagreement note on the enquiry report as mandated under Rule 18(2) and (3) of 'the disciplinary rules'. He thus submits that the order passed by the Director, Primary Education in so far as it proceeds to impose penalty of stoppage of three increments with cumulative effect as also to restrict the salary and allowances of the petitioner for the suspension period, to the subsistence allowance is contrary to the law.

It is taking note of the issue raised that learned State counsel was directed to seek instructions on the limited issue. The matter has

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thereafter been after take up today when a supplementary counter affidavit has been filed and while the answers are evasive but Mr. Chandra Shekhar Singh, A.C. to G.A.10 admits to the statutory violation and agrees that no disagreement note has been issued by the Director, Primary Education as mandated under Rule 18(2) and (3) of 'the disciplinary rules'.

Having heard learned counsel for the parties and in view of the uncontested circumstances where the mandatory stipulations present under rule 18(2) and (3) of 'the disciplinary rules' has not been followed by the disciplinary authority while issuing the order of penalty, the penalty order under challenge bearing Memo No. 991 dated 9.11.2016 is quashed and set aside. The matter is remitted to the disciplinary authority i.e. Director, Primary Education to proceed in the matter in accordance with law from the stage of issuance of a disagreement note. It goes without saying that the salary and allowance for the period under suspension of the petitioner would be guided by the final outcome of the proceeding.

The writ petition is allowed.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.08.2017
Transmission Date	NA

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