

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12472 of 2016

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Priya Ranjan Das Ranjan, aged about 45 years, S/o Late Ram Nandan Sah, at present posted as Assistant Teacher of Utkramit Girls Middle School, Shahpur, Undi, Shahpur, Patori, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The District Magistrate, Samastipur.
3. The District Programme Officer, Samastipur.
4. The District Education Officer, Samastipur.
5. The Block Education Officer, Patori, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate with Mr. Ravi Kumar Singh, Advocate
For the State	:	Mr. A.C. to A.A.G. 15

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 14-11-2017

Heard Mr. Rajendra Prasad Singh, learned senior counsel along with Mr. Ravi Kumar Singh, learned counsel for the petitioner and learned A.C. to A.A.G. 15 for the State.

2. The petitioner has moved the Court for the following reliefs:

“ That this is an application for issuance of an appropriate writ or writs, order(s) or direction(s) for quashing the order bearing Memo No. 2314, dated 30/05/2016 issued by District Programme Officer, Samastipur which and petitioner has been suspended and departmental proceeding has been initiated and further to quash Memo No. 2341, dated 31/05/2016



charge has been framed as Prapatra 'Ka' against the petitioner.

And further direction to respondent authorities to subsistence allowances to the petitioner and further to pay all consequential benefit to the petitioner

And/or

Pass such other order/orders as your Lordship may deem fit and proper."

3. The petitioner had initially assailed the order of suspension, basically on the ground that the order having been passed by the District Education Officer, was beyond jurisdiction. However, during the pendency of the writ petition, the suspension has been revoked by order dated 18.09.2017.

4. Learned counsel for the petitioner submitted that the District Education Officer is not the appointing authority of the petitioner, who is an Assistant Teacher, being directly under the Government, the impugned order passed to suspend him is beyond jurisdiction.

5. Learned counsel for the State submitted that in view of the notification of the State Government issued under Memo No. 939 dated 23.06.2011, the disciplinary power over the Assistant Teacher has also been vested with the District Education Officer.

6. Learned counsel for the petitioner submitted that the



power may be available with the District Education Officer but with the rider that it has to be in terms of the regulations and instructions issued by the Government. In this connection, he has drawn the attention of the Court to the provisions of the *Bihar Rajya Rajkiyakrit Prarambhik Vidyalaya Shikshak (Sthanantran Evam Anushasnik Karvai) Niyamavali*, 2002 (hereinafter referred to as the 'Rules'). He submitted that as per Rule 20 (1) of the Rules, the power to suspend a Headmaster/Teacher can be exercised by the District Education Officer but only after approval of the Deputy Development Commissioner-Cum-Chief Executive Officer, Zila Parishad. It was submitted that in the present case, no such approval was obtained.

7. On a specific query of the Court to learned counsel for the State as to whether any other Rules/regulations/instructions govern the field, he is not in a position to show any such provision.

8. Having considered the matter, the Court finds substance in the submissions of learned senior counsel for the petitioner. When the power to suspend is specifically provided under the Rules, the subsequent notification of the State Government delegating such power to the District Education Officer is not blanket. Even in the said notification, it has been provided that such power shall be exercised in terms of the Rules/directions of the Government. In the present case, as has been pointed out by learned counsel for the petitioner, Rule 20



(1) of the Rules requires the District Education Officer to get approval from the Deputy Development Commissioner-Cum-Chief Executive Officer, Zila Parishad before suspending any Headmaster/Teacher. It is an admitted position in the present case that such approval has not been taken. Once, this basic fact is not in dispute, any power exercised by any authority has to be in accordance with law. Unless the law/statute specifically confers such disciplinary power, the same cannot be exercised and moreover, even that exercise has to be in terms of the procedure prescribed in such statute. In the present case, without the approval of the Deputy Development Commissioner-Cum-Chief Executive Officer, Zila Parishad, when suspension cannot be resorted to, the District Education Officer, in the present case, could not have been the authority to approve such suspension.

9. As the suspension of the petitioner has already been revoked, the Court will not pass a redundant order. However, when the Court has held that the power to suspend did not vest in the District Education Officer, it shall be deemed that the impugned suspension order was void *ab initio*. Accordingly, consequences shall follow and the petitioner shall be entitled to all consequential benefits for the period of suspension also.

10. However, the present order would not preclude the authorities to act in accordance with law based on the materials before



them for any disciplinary action against the petitioner in future.

11. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

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