

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14998 of 2006

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Nandlal Prasad, son of Late Ram Sundar Prasad, resident of village Noor Chhapra, P.S. Minapur, District Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar
2. Regional Education Deputy Director, Tirhut Division, Muzaffarpur
3. District Education Officer, Muzaffarpur
4. Block Education Development Officer, Meenapur-1, Muzaffarpur
5. Principal Government High School, Turki, Muzaffarpur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 16144 of 2009

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Haribansh Pandey, son of Late Ram Lagan Pandey, resident of Village Manpura, P.O.- Birahina Bazar, P.S.- Baruraj, Distt.- Muzaffarpur

.... Petitioner

Versus

1. The State Of Bihar
2. The Director, Secondary Education, Government of Bihar, New Secretariat, Patna
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur

.... Respondents

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Appearance:

(In CWJC No.14998 of 2006)

For the Petitioner :	Mr. S.P. Srivastava, Mr. Diwakar Prasad Karn Ms. Anu Priyadarshini Mr. Navin Anand, Advocates
For the Respondents:	Mr. Hansh Kumar, GP 8 Mr. S.K.Upadhyay, Advocate

(In CWJC No.16144 of 2009)

For the Petitioner :	Mr. S.B.K.Manglam Mr. Ravi Ranjan, Advocates
For the Respondents :	Mr. Ajay Kumar, AC to GP 4

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-07-2017

The present writ petitions involve common issues and with the



consent of all the parties, are being taken up together for disposal at the admission stage itself.

2. The petitioners are aggrieved by the termination of their services from the post of 'contingent menial orderly' in Government High School, Turki, Muzaffarpur and have sought quashing of the impugned orders as contained in Memo No. 760 dated 20.09.2006 (Annexure-1 in CWJC No. 14998 of 2006) and Memo No. 1224 dated 27.10.2009 (Annexure-15 in CWJC No. 16144 of 2009); and for connected reliefs.

3. Mr. S.P. Srivastava and Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the petitioners in the two writ petitions respectively, have made submissions at some length on merits to assail the orders of termination. This Court however, is of the view that the writ petitions may be disposed of on a preliminary issue without going into the detailed merits of the matter. From the facts obtaining in CWJC No. 14998 of 2006 it transpires that a show cause notice in letter No. 9900 dated 09.12.2005 (Annexure-5) was issued by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur (Annexure-2), followed by similar notices as contained in letter No. 88 dated 07.02.2006 (Annexure-7) and letter No. 276 dated 25.04.2006 (Annexure-9), all of which required the petitioner to produce relevant documents to enable verification of validity of the petitioner's appointment. None of these notices, however, put the petitioner on notice about proposed action such as cancellation of appointment, to be taken by the respondents. The final order of termination dated 20.09.2006 (Annexure-1) has been passed assigning certain reasons and based on certain materials such as the departmental letter Nos. 444 dated 30.07.1987 and 620 dated 24.08.1991,



which were never supplied to the petitioner nor was he confronted with the same prior to passing of the impugned order.

4. In the case of the petitioner of CWJC No. 16144 of 2009, a show cause notice in letter No. 447 dated 16.08.1999 (Annexure-4) was issued, wherein the relevant documents were called for to enable examination of the validity of the petitioner's appointment. It was further stated that in case the documents were not furnished then the petitioner's appointment would be terminated. An order of removal in Memo No. 848 dated 30.05.2001 (Annexure-8) then came to be passed. Such order was however challenged by the petitioner in CWJC No. 10065 of 2001. After a detailed consideration of the matter, this Court disposed of the writ petition by its order dated 07.10.2005 in the following terms:

"The writ petition is, accordingly, disposed of directing the respondents/respondent concerned to consider as to whether the case of Nand Lal Prasad is similar to the case of the petitioner and Nand Lal Prasad is still in job and dispose of the same by a reasoned order in accordance with law within a period of four months from the date of receipt/production of a copy of the order."

5. It is evident from the above facts that the scope of enquiry to be made by the respondents in terms of the order of this Court was thus limited to seeing whether the case of Nandlal Prasad was similar to the case of the petitioner. By letter No. 255 dated 17.04.2006 (Annexure-11), however, the respondents once again sought production of the documents to examine the authority of the petitioner's appointment. This clearly amounted to a fresh proceeding as it was not in pursuance of the observations of the Court. Such



notice did not inform the petitioner about the nature of proposed action to be taken against him in case of default. Another similar notice was issued by letter No. 283 dated 03.05.2006 (Annexure-12) and finally the impugned order of termination dated 27.10.2009 (Annexure-15) was passed. A vague reference therein has been made to some departmental Rules and provisions as well as letters No. 317 dated 22.05.1993 and No. 88 dated 17.01.1997, none of which were made available to the petitioner prior to passing of the impugned order.

6. It is well settled that before any adverse order is passed against any person, a specific show cause must be issued making it known to the affected person the materials on the basis of which any adverse order is to be passed, as well as the nature of the proposed action to be taken against him. In the instant case, except calling for certain documents from the petitioners, no details of the proposed action or the basis for taking action was made known to the petitioner and hence the notices as issued cannot be treated as show cause notices in the eye of law.

7. This Court is therefore, of the view that the impugned orders cannot be sustained in absence of proper show cause notices specifically confronting the petitioners with the materials sought to be used against them and the proposed action to be taken.

8. Accordingly, the impugned orders as contained in Memo No. 760 dated 20.09.2006 (Annexure-1 in CWJC No. 14998 of 2006) and in Memo No. 1224 dated 27.10.2009 (Annexure-15 in CWJC No. 16144 of 2009) are hereby set aside. The matters are remitted back to the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to issue appropriate



show cause notices before proceeding in the matter in accordance with law after grant of opportunity of being heard to the petitioners.

9. The writ petitions stand allowed.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.07.2017
Transmission Date	N.A.

