

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8298 of 2016

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NIRAJ KUMARI, Wife of Ashwini Chaudhary, At + Post- Kanhaiyachak, Police Station- Parbatta, District- Khagariya, Bihar, PIN-851216.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resource Development Department, New Secretariat, Patna -800001,
2. The District Magistrate, Zila Samaharnalay, Khagaria, District-Khagaria,
3. The District Programme Officer, Establishment (Education Department), Khagaria,
4. The District Education Officer, District- Khagaria,
5. The Block Education Officer, Parbatta, District- Khagaria,
6. The Block Resource Person, Parbatta, District- Khagaria,

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Sr. Adv. with
Mr. Ravindra Kumar @ Ravindra Kr Rai, Adv.
For the Respondent/s : Mr. Viveek Anand Amritesh, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-02-2017

Heard Mr. Yugal Kishore, learned senior counsel appearing for the petitioner and Mr. Vivek Anand Amritesh, learned Assisting Counsel to Standing Counsel No.28 for the State.

The petitioner is aggrieved by the office order bearing Memo No.704 dated 21.3.2016, whereby the petitioner, Incharge Headmaster of Middle School, Kanhaiyachak (South), Parbatta in the district of Khagaria has been put under suspension, inter alia, on the allegations of irregularities and black-marketing of food materials supplied under the Mid-day Meal Scheme.

The FIR is the foundation for the order of suspension, a



copy of which is enclosed at Annexure-5 to the writ petition giving rise to Parbatta P.S. Case No.392 of 2015 registered under section 7 of the E.C. Act. The petitioner along with one other has been made accused in the case. It is following the institution of criminal case that a recommendation was made by the District Programme Officer, Mid-day Meal Scheme, Khagaria to the District Education Officer, Khagaria for appropriate action against the petitioner vide letter dated 23.12.2015 placed at Annexure-6 and accordingly a show cause was issued by the District Programme Officer, Establishment (Education Department), Khagaria on 8.1.2016 enclosing the letter of the District Programme Officer, Mid-Day Meal Scheme dated 23.12.2015 which is enclosed at Annexure-7. The petitioner filed an exhaustive reply denying the allegations vide Annexure-8 and by order dated 21.3.2016 of the District Programme Officer, Establishment (Education Department), Khagaria the explanation of the petitioner has been rejected as non-satisfactory and on the direction of the District Education Officer, Khagaria the petitioner has been put under suspension.

It has been argued by Mr. Yugal Kishore, learned senior counsel appearing for the petitioner that neither any charge-sheet has been submitted by the investigating agency in the police case nor any charge-sheet has been framed in the proceeding contemplated in



the order of suspension. He submits that while more than a year has lapsed since the institution of the criminal case, a year is going to lapse in so far as the order of suspension is concerned.

A counter affidavit is filed reiterating the position as reflecting from the FIR. There is no explanation as to why even when the order of suspension contemplates initiation of a disciplinary proceeding by service of a charge-sheet it has not been served. The order of suspension apparently is issued upon institution of the criminal case and in contemplation of initiation of a departmental proceeding since it specifically contemplates issuance of charge memo separately. Unfortunately no charge memo has been served till date. Had it been a case of suspension resting on the criminal proceeding simplicitor perhaps it would be a different deliberation but since the order of suspension contemplates initiation of a disciplinary proceeding by issuance of separate charge memo and undisputedly no charge memo has been served on the petitioner, the order of suspension would be hit by the provisions underlying rule 9(1)(a) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') read alongside rule 9(7) thereof and since the charge-sheet has not been served on the petitioner it faces a revocation. The order of suspension is also not sustainable for it is in the light of the



direction issued by the superior authority being the District Education Officer.

For the reasons so discussed, the order of suspension bearing Memo No.704 dated 21.3.2016 of the District Programme Officer, Establishment (Education Department), Khagaria cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed with consequential reliefs.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-03-2017
Transmission Date	NA

