

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7135 of 2016

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1. Ram Naresh Kumar son of Late Ram Govind Ram, Resident of Village- Dhaka
Ramchandra, P.O. & P.S.- Dhaka, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. Director Primary Education, Bihar, Patna.
3. Principal Secretary, Education Department, Primary Education Directorate,
Bihar, Patna.
4. Regional Deputy Director, Education, Tirhut Division, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Adv.

For the Respondent/s : Mr. Raj Kumar Singh, A.C. to S.C-8

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-03-2017

Heard Mr. Ranjeet Kumar, learned counsel for the petitioner
and Mr. Raj Kumar Singh A.C. to S.C.7 for the State.

The petitioner is aggrieved by the order bearing Memo No.504
dated 4.4.2014 whereby the petitioner has been dismissed from
service under the orders of the Principal Secretary, Directorate of
Primary Education, Department of Education in exercise of powers
vested under Rule 14 (xi) of the Bihar Government Servant
(Classification, Control and Appeal) Rules, 2005 (hereinafter referred
to as 'the Rules') as amended from time to time. A copy of the order
is impugned at Annexure-10 to the writ petition.

In the nature of order this Court proposes to pass it would not



be required to enter into the merits of the case.

Facts of the case briefly stated is that the petitioner was allegedly trapped while accepting bribe giving rise to Vigilance P.S. Case No. 115 of 2007. A copy of the F.I.R. is placed at Annexure-1. The petitioner was put under suspension vide order passed on 6.11.2007 with effect from the date he was taken into custody i.e. 11.10.2007. The petitioner was released on bail on 24.5.2008 and whereafter a disciplinary proceeding was initiated by his disciplinary authority i.e. Director, Primary Education vide order bearing No. 401 dated 30.4.2009, a copy of which is placed at Annexure-3. The copy of the charge memo is enclosed at Annexure-2. The allegation as manifest from the charge memo is the acceptance of alleged illegal gratification and the evidence relied upon is the complaint of the complainant. The petitioner denied the accusation before the Conducting Officer vide Annexure-4. The Enquiry Officer –cum- the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur submitted his report to the disciplinary authority i.e. the Director, Primary Education vide letter dated 17.9.2009 present at Annexure-5 which was followed by a second show cause under Rule 18 of ‘the Rules’ present at Annexure-7. The petitioner replied to the second show cause notice issued by the disciplinary authority i.e. the Director, Primary Education which is present at Annexure-9 and has



been met with an order of dismissal passed by the Principal Secretary, Education Department taking over the role of the disciplinary authority.

The sequence of events itself suggest the illegality in the order passed by the Principal Secretary because while the disciplinary authority of the petitioner is the Director, Primary Education who has initiated the proceedings and on receipt of the enquiry report, has issued the second show cause notice in tune of Rule 18 of 'the Rules', but the final order is passed by the Principal Secretary.

Reference is made to a judgment of the Supreme Court reported in **(2010) 7 SCC 781 (Rasid Javed and Others Vs. State of Uttar Pradesh & Another)** more particularly paragraph 51 of the judgment in which the Supreme Court in reference to one of its earlier judgment since reported in **AIR 1959 SC 308 (Gullapalli Nageswara Rao Vs. A.P.SRTC)** has held that a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing. The legal position so settled yet evades the wisdom of the executive.

Paragraph 51 of the judgment reads thus:

“51.That a person who hears must decide and that divided responsibility is destructive of the concept of judicial hearing is too fundamental a proposition to be doubted. This settled principle has also been highlighted by this Court in *Gullapalli Nageswara Rao*.....”

* Gullapalli Nageswara Rao Vs. A.P.SRTC, AIR 1959 SC 308



The order is apparently in the teeth of the principles of natural justice because the authority passing the order is not the disciplinary authority who has conducted the proceedings rather the appellate authority has usurped the jurisdiction of the disciplinary authority. On this apparent violation and in view of the legal position settled by the Supreme Court referred to above, the order of the Principal Secretary, Education Department, impugned at Annexure-10 cannot be upheld and is accordingly quashed and set aside.

The matter is remitted to the disciplinary authority i.e. the Director, Primary Education before whom the enquiry report has been submitted and the petitioner has also filed his reply to the second show cause notice so issued by him, to take a final decision in accordance with law preferably within a period of 3 months from the date of receipt/production of a copy of this order without being prejudiced by the opinion expressed by the Principal Secretary, Education Department, Government of Bihar.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2017
Transmission Date	NA

