

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18134 of 2016

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Md. Quzzatud Daulla, S/o Late Md. Basir, Resident of Village- Maulana Dih,
P.S.- Chabilapur, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Regional Deputy Director Education, Patna Division, Patna.
4. The District Magistrate, Nalanda.
5. The District Education Officer, District- Nalanda.
6. The District Programme Officer (Establishment), District- Nalanda.
7. The Block Education Officer, Nagarnausa, District- Nalanda.
8. The Block Welfare Officer, Nagarnausa, District- Nalanda.
9. The Public Grievance Officer, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Prashant, Advocate
		Mr. Shaishav Kumar, Advocate
For the Respondent/s	:	Mr. Prabhu Narayan Sharma, AC to AG

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 12-04-2018 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

The petitioner has filed this writ petition for quashing the order dated 07.10.2015, Annexure-16 by which the petitioner has been placed in lowest pay scale of Assistant Teacher basic Grade pay scale of 9300-34800 by way of punishment in a departmental enquiry and also for quashing the order dated 09.09.2016, Annexure-18 by which the appellate authority confirmed the order of punishment dated 7.10.2015, Annexure-16.



In a departmental proceeding the petitioner was found partly guilty for issuance of transfer certificate on the basis of alleged forged modification letter which was not authenticated by the competent authority in connection with annual secondary examination of 2011 and transfer certificate was issued making entry of passing of examination in Second Division which has encouraged the candidate to commit mischief. The allegation against the petitioner was that he was negligent in discharge of his duty. The Enquiry Officer has submitted his report stating that petitioner has issued transfer certificate but subsequently on receipt of the T.R. from the Board, he has cancelled the T.C. issued earlier and as such the correction was made within time. The Enquiry Officer on that basis proceeded that the charge is partly proved.

Learned counsel for the petitioner submits that it is admitted in the enquiry report that the moment TR was received from the Board, on verification of the TR register of the Board, the petitioner has rectified the mistake and no loss was caused on account of the timely rectification by the petitioner. In view of the aforesaid the petitioner's case requires consideration as it is not a case of 'misconduct' but 'negligence' and negligence itself is not a ground to proceed and punish the petitioner. In the



totality of the fact situation when no loss was caused as the moment the petitioner received the TR register from the Board corrective measure was adopted by him, the Enquiry Officer and the Disciplinary Authority should have considered the case of the petitioner leniently.

Learned counsel appearing on behalf of the State submits that in the instant case there is no procedural impropriety which renders the departmental proceeding vitiated. He submits that although no loss was caused on account of laps of the petitioner, but the fact remains that he has negligently discharged his duty in issuing the transfer certificate.

The issue whether negligence is misconduct or not was considered by the Apex Court in the case of **Union of India and Others Vs. J. Ahmad : AIR 1979 SC 1022** where the Apex Court has held out that negligence per say does not constitute misconduct. The petitioner has been inflicted major punishment in the facts of the case even when he rectified the mistake promptly, i.e., the moment he received the authenticated TR register from the Board.

In the matter of punishment, the Court interferes only when it is shocking to the conscience. Ordinarily, it is the domain of the Disciplinary Authority and the Court is not



supposed to substitute the punishment inflicted in the departmental proceeding. The Court can only remand the matter for reconsideration on the quantum of the punishment. Reference in this connection may be made to the judgment of the Apex Court in the case of B.C. Chaturvedi Vs. Union of India: (1995) 6 SCC 749 = AIR 1996 SC 484 which is settler on the point. The same view was reiterated by the Apex Court in the case of **Union Of India & Ors vs P.Gunasekaran: (2014) 4 SCC 108.**

In the totality of the fact situation, this Court is of the view that the petitioner has rectified the mistake immediately after receipt of the TR Register from the Board and cancelled the transfer certificate and it is also apparent that no loss was caused on account of corrective measures adopted by the petitioner instantly. The Court in the totality of the fact situation, deem it fit and proper to remand the matter back to the disciplinary authority to reconsider the case of the petitioner on the quantum of punishment. Annexure-16 is also required to be reconsidered in the light of the observations made hereinabove. The disciplinary authority should also consider the fact that the petitioner has now superannuated from the service and the punishment may have the telling effect on his pensionary



benefit.

The entire exercise in this regard must be done by the disciplinary authority on the point of reconsideration of the quantum of punishment within a maximum period of 60 days from the date of receipt/production of a copy of this order.

With the aforesaid the writ petition is allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

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