

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10288 of 2011

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Kusum Kumari Pandey, Daughter of Shri Baban Dixit, wife of Shri Hrishikesh Pandey, resident of Village- Khudra, P.S. Nawtan, Dist. Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna.
4. The District Magistrate, Siwan.
5. The District Superintendent of Education, Siwan.
6. The Range Education Officer, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Singh, Advocate
Mr. Ajay Kumar Pandey, Advocate
For the Respondent/s : Mr. Ajay Behari Sinha, GA-8
Mr. Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 21-08-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner is aggrieved by the order dated 25.03.2011 (Annexure-1), whereby the petitioner was dismissed from service from the date of appointment.

3. Manifold submissions have been advanced on behalf of the petitioner:

(i) Firstly; the petitioner was exonerated in criminal case and as such the petitioner cannot be inflicted punishment in the departmental proceeding.

(ii) Secondly; Mr. Shashi Bhushan Singh, learned



counsel for the petitioner submits that the petitioner was not given the copy of the enquiry report and without giving second show-cause notice, the impugned order of dismissal was passed.

(iii) Thirdly; Mr. Singh contended that the order of dismissal was passed on 25.03.2011, but it was made effect from the date of initial appointment and therefore, the order of dismissal from retrospective date is impermissible.

4. The submissions on behalf of the petitioner that the petitioner is acquitted in criminal case and, as such, the departmental proceeding based on the same is unsustainable. The Court is unable to accept this submission for the reason that the standard of proof in criminal case and department proceeding varies. In criminal case, the standard of proof is to prove the guilt beyond all reasonable doubt, whereas in the departmental proceeding, the standard of proof is preponderance of probability and as such acquittal in the criminal case cannot be a ground to hold that the departmental proceeding based on the same fact is unsustainable, once the petitioner is acquitted in the criminal case.

5. The other two submissions advanced on behalf of the petitioner merits consideration. The order of termination cannot be given effect from the date of initial appointment. Annexure-1 was issued on 25.03.2011, but the order of dismissal was passed with



effect from the initial date of appointment, such order of termination from retrospective date is unsustainable in law and accordingly the same cannot sustain.

6. The other part of the contention of Mr. Singh that the order was passed without giving second show-cause notice with the enquiry report is well founded. The judgment of the Apex Court in the case of **Union of India and Ors. Vs. Mohd. Ramjan Khan** reported in **AIR 1991 SC 471** is settler on the point. The judgment of **Ramjan Khan** case (supra) was affirmed by the Constitution Bench in the case of **Managing Director ECIL Hyderabad & Ors. vs. B. Karunakar**, reported in **(1993) 4 SCC 727**.

7. In view of the judgment of the Apex Court in the case of **Union of India and Ors. Vs. Mohd. Ramjan Khan** and **Managing Director ECIL Hyderabad & Ors. Vs. B. Karunakar** (supra), the order of dismissal without giving second show-cause notice is unsustainable.

8. Accordingly, the order dated 25.03.2011 is hereby quashed. The matter is remitted back to the respondents in the light of judgment of Apex Court in **Managing Director ECIL Hyderabad & Ors. Vs. B. Karunakar** case (supra). The respondents are directed to issue second show-cause notice along with the copy of enquiry report so that the petitioner may submit reply to the second show-cause



notice and after considering the reply to the second show-cause, the respondent (disciplinary authority) may take appropriate decision in accordance with law.

9. The consequential relief on quashing of Annexure-1 will abide by the fresh decision passed by the disciplinary authority after proceeding from the stage of issuance of second show-cause notice in the light of the judgment of the Apex Court in **Managing Director ECIL Hyderabad & Ors. Vs. B. Karunakar** case (supra).

10. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	

