

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8601 of 2017

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Alok Kumar S/o Late Bijali Prasad Singh R/o Village Mahmadda, Police
Station - Patahi, District East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resource Department, Bihar, Patna.
3. The Director (Secondary Education), Human Resource Department,
Government of Bihar, Patna.
4. Regional Deputy Director, Education, Tirhut Division, Muzaffarpur.
5. District Education Officer, Vaishali at Hajipur.
6. District Education Officer, East Champaran, Motihari.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. K.K. Thakur, Advocate
For the Respondent/s : Mr. J.P. Kishan, A.C. to S.C.-13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 03-08-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner is challenging the order of termination from the service vide memo no.104 dated 23.01.2017, passed by the Regional Deputy Director, Education, Tirhut Division, Muzaffarpur, in exercise of power conferred under Rule-14(xi) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. The petitioner is also challenging the order dated 14.09.2017, passed by the



Appellate Authority i.e. Director, Secondary Education, Government of Bihar, Patna, who refused to interfere with the order of dismissal, affirmed the same.

3. The petitioner, at the relevant time, was posted as Orderly in the office of the District Education Officer, East Champaran. On 29.12.2015, one Munna Sah, a Panchayat Teacher of the Government School, Shaktinagar, Block-Paharpur, District- East Champaran, made a complaint before the Superintendent of Police, Vigilance Department, Bihar, Patna, alleging that the petitioner was demanding a bribery of Rs.20,000/- for giving him a letter, whereby his salary, which had been stopped earlier, has been ordered to be released. After receipt of the complaint of Munna Sah, the Superintendent of Police, constituted a team, who visited the place of the petitioner and prepared pre trap memorandum and submitted before the Superintendent of Police, Vigilance Department. He constituted a raiding team and the petitioner was caught red-handed taking the bribe of Rs.10,000/-, which led to institution of Vigilance P.S. Case No.05 of 2016 and thereafter post trap memorandum was prepared.

4. Whereafter, a departmental proceeding was initiated and the petitioner was served the charge memo in the



shape of “Prapatra-K” vide memo no.525 dated 17.03.2016 (Annexure-3), making allegation about his taking bribe and was caught red-handed, whereafter the Inquiry Officer started proceeding, he had sent the notice on 17.12.2016 for his appearance on 20.12.2016. On 20.12.2017, the petitioner did not turn up, again the notice was issued under registered cover, fixing the date on 28.12.2016. On that day, the petitioner appeared and requested for supply of documents mentioned in the charge memo and on his request next date of hearing was fixed on 10.01.2017. The documents were sent to the petitioner on 29.12.2016, admittedly, which was received by the petitioner and next date was fixed as per his desire on 10.01.2017 and on 10.01.2017, the Inquiry Officer fixed the final date of hearing on 23.01.2017, but it is surprising that the Inquiry Officer even before final date of argument submitted the inquiry report on 17.01.2017. It does not stand to the reason how the Inquiry Officer could have submitted the inquiry report before giving hearing to the petitioner, which was fixed on 23.01.2017, itself reflects the manner the inquiry has been conducted. It is also to be noted that the Inquiry Officer has not conducted the inquiry in terms of Rule-17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 as on the basis



of F.I.R. and other documents attached with charge memo, the charges were found to be proved, accordingly, the dismissal order has been passed, whereas, the law prescribes, the Inquiry Officer should follow proper and fair procedure in the manner prescribed under the rule, the charges were to be proved by oral as well as documentary evidence and the documents can only be testified and proved through oral evidence, which has not been done in the present case, and as such, the order of punishment as well as the order of the Appellate Authority do not survive on the ground that the Inquiry Officer has not conducted proper inquiry as he submitted the inquiry report before the due date fixed by him for final argument i.e. on 23.01.2017. At the same time, the charges which were required to be proved by the oral evidence of witnesses, who were members to the trap team, but not a single member was examined by the prosecution witness. Merely, some documents were filed along with charge memo, any employee cannot be punished without following the proper procedure, unless those charges are proved through oral evidence as well as documentary evidence.

5. In such view of the matter, the order of termination containing memo no.104 dated 23.01.2017 as well as the order of the Appellate Authority dated 14.09.2017 are quashed. The



matter is remanded back to the Inquiry Officer to conduct the inquiry in a fair, proper and transparent manner after following the procedure provided in Rule-17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. The Disciplinary Authority shall take decision in accordance with law. It goes without saying that the petitioner will be entitled to subsistence allowance. Any payment will be subject to outcome of the departmental proceeding.

6. With the aforesaid observations and directions, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.08.2018
Transmission Date	N/A.

