

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8239 of 2013

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Sunil Kumar Tiwari S/O Late Pashupati Nath Tiwari R/O Village-Bathana, P.S.-
Goraul, District- Vaishali

.... **Petitioner**

Versus

1. The State Of Bihar
2. The Principle Secretary Human Resources Department, Bihar, Patna
3. The Director (Administration)-Cum- Additional Secretary Education
Department, Bihar, Patna
4. The Deputy Director Primary Education, Bihar, Patna
5. The Regional Deputy Director Patna Division, Patna
6. The District Superintendent Of Education, Rohtas At Sasaram
7. The Block Development Officer-Cum- Executive Officer (Panchayat Samittee)
Tilauthu, Rohtas At Sasaram

... **Respondents**

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Appearance :

For the Petitioner : Mr. Prabhakar Singh, Advocate

For the Respondents : Mr. S.K.Ranjan, Advocate and
Mr. Sanjay Kumar, AC to GP 17

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date: 25-08-2018

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

2. The petitioner has approached this Court in the instant
proceedings being aggrieved by the order of punishment dated
3.2.2012 bearing Memo no. 166 whereby certain punishments have
been awarded to him. He is also aggrieved by order dated
12.2.2013, passed by the Appellate authority bearing Memo No.
143 whereby modifying the punishment awarded earlier five
punishments have been awarded which are as follows:-

1. Censure (year 2006-2007).
2. Withholding two annual increments with non
cumulative effect.
3. He would not be posted as Block Education
Officer.
4. He would not be entitled to any other benefits



other than subsistence allowance during suspension period and

5. The punishment is to be entered in the service book of the petitioner.

3. The petitioner has been proceeded against on charge that he has offered appointment to two candidates on the post of block/physical teachers even though the certificates which had been submitted by the said two candidates were from an institution not recognized for such employment.

4. In the proceedings, the petitioner has placed before the Enquiry Officer the admitted fact that two lists were communicated at the time of appointment process to the petitioner from the department. One list was of recognized institutions and the other was of un-recognized institutions. Other admitted fact is that the institution from which the selection in question have been made were neither in the list of recognized institutions nor in the list of un-recognized institutions.

5. The Enquiry Officer has considered this aspect of the matter. Petitioner's claim was that the certificates in support of the qualification produced by the two persons appointed by him, was of the period prior to 1995 and the list of recognized institution was having name of only such institutions which were recognized by the National Council for Technical Education (herein after referred to as 'the NCTE') for teaching which came into existence after



1995. It is submitted by learned counsel for the petitioner that the certificates relied upon by the said two persons were not issued by institutions which had figured in the list of un-recognized institutions. Also the claim of the two appointees genuinely appeared bona fide since the degree was of prior to 1995, way back before the petitioner selected the said two persons for appointment as block/physical teachers.

6. It is also his submission with reference to one departmental communication dated 19.5.2010 bearing Memo no. 52 that it is only under this letter that the institution Ravindra Vishwa Vidyapith, New Delhi was finally declared to be un-recognized institution. He has pointed out that it is only after such declaration that the appointment offered to candidates on basis of the certificates issued by the said institutions were cancelled. Even the two appointees of the petitioner were finally removed after issuance of departmental letter dated 19.5.2010. Having considered all these aspects of the matter, the Enquiry Officer has found the action of the petitioner in making the selection to be a genuine misconception/mistake occasioned by the various circulars which were before the petitioner while conducting the selection, which have been taken note of herein above.

7. Admitted position is that this institution neither figured in the list of recognized nor un-recognized institutions. The



admitted position is also that for the first time under the departmental letter dated 19.5.2010 bearing Memo no. 52 the recognition of Ravindra Vishwa Vidyapith, New Delhi was cancelled. These are mitigating factors and the circumstances on basis of which the Enquiry Officer has concluded the charges not to be proved.

8. The Disciplinary Authority however has taken a contrary view to the same set of facts and has not accepted the petitioner's plea of decision to appoint the two candidates being actuated by misconception/mistake. The Appellate Authority has also not accepted the plea of mistake.

9. This Court is not inclined to interfere with the findings of the Appellate Authority or the order passed by the Disciplinary Authority taking a contrary view. The mitigating factors noticed above however requires consideration while awarding punishment to the petitioner. The punishment appears to be grossly disproportionate to the allegation. This aspect of the matter has not been considered by the Appellate Authority.

10. The interest of justice would therefore be served if the petitioner makes a representation to the Appellate Authority for limited consideration on the point of quantum of punishment which is disproportionate to the allegations in view of the specific findings of the Disciplinary Authority regarding the conflicting list of



recognized and un-recognized institutions communicated at the time of the process of selection.

11. The petitioner may approach the Appellate Authority for such consideration within six weeks from today. In the event, such application is filed, the Appellate Authority is expected to consider the same in light of the observations made in the writ petition and considering the recommendations of the Enquiry Officer.

12. The Appellate Authority while re-considering quantum of punishment should pass a reasoned and speaking order in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order along with petitioner's representation, if filed within six weeks.

13. The writ petition is disposed of.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2018
Transmission Date	NA

