

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6994 of 2014

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Raksha Ram @ Ram Raksha Ram, Son of Late Shinga Ram, Resident of Village -
Dhobawaliyam, P.S. Manjhagarh, District – Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Vikash Bhawan, Patna
2. The District Magistrate, Gopalganj
3. The Regional Deputy Director of Education, Saran Commissioner, Chapra
4. The District Education Officer, Gopalganj
5. The District Programme Officer (Estab.), Gopalganj
6. The Block Education Officer, Baikunthpur
7. The Block Education Officer, Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar, Advocate

For the Respondent/s : Mr. Amit Kumar Singh, Ac to SC-21

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 31-10-2018

The instant writ application has been filed by the petitioner for quashing the order dated 29.05.2012 by which the petitioner was inflicted major punishment without following the due procedure prescribed by law and also for quashing the appellate order dated 24.08.2013 passed by the R.D.D.E., Saran.

2. Learned counsel appearing on behalf of the petitioner submits that the petitioner was inflicted major punishment of stoppage of one increment with cumulative effect. Under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005



such punishment is categorized as major punishment. He further submits that only formality as to enquiry was completed in the instant case. He has invited the attention of this Court to the enquiry report contained in Annexure-5.

3. From perusal of Annexure-5, no reasonable man can approve Annexure-5, as an enquiry report, which records the finding as to the guilt of the petitioner. Annexure-5 is quoted herein below for ready reference:

(अष्ट)

प्रखण्ड शिक्षा पदाधिकारी,

बैकुण्ठपुर ।

सवा में,

जिला कार्यक्रम पदाधिकारी,

(स्थापना), गोपालगंज ।

बैकुण्ठपुर, दिनांक 28-4-2012

विषय: श्री रक्षा राम प्र० आ० स० निकासी एवं व्ययन पदा० म०
वि० तेलिया बॉध, अंचल-मॉझा का जॉच प्रतिवेदन ।

महाशय,

उपर्युक्त विषयक अंकित करना है कि श्री रक्षा राम पर
लगाये गये प्रतिवेदन विन्दुवार निम्नवत है :-

आरोग्य

तथ्य

1. विभाग द्वारा निर्धारित
स्थान (BRC) पर बैठकर कार्य
नहीं करना ।

1. श्री रक्षा राम (निलम्बित प्र० शिक्ष) ने
जॉच के कम में बताया कि प्रखंड
शिक्षा पदा० मॉझी के मौखिक आदे-
शानुसार विपत्र के बारे में जानकारी
रखने वाले शिक्षक हो बी.आर.सी. मे



- बनाते मैं विद्यालय कार्य के उपरान्त बी.आर.सी. पर जाकर विपत्र पर हस्ताक्षर करता हूँ ।
2. बकाये विपत्र को राशि हतु शिक्षकों से नाजायज राशि का माँग करना ।
3. बेतन निकासी संबंधी अभिलेख का उद्यतन नहीं होना ।
4. विभागीय बैठक में भाग नहीं लेना ।
5. बकाये राशि के भुगतान में शिक्षकों के साथ भेदभाव रखना ।
2. जॉच के कम में शिक्षकों के पूछताछ करने पर निकासी एवं व्ययन पदाद द्वारा नाजायज राशि का माँग करने वाली बात का कोई साक्ष्य नहीं मिला अतः आरोप निराधार है ।
3. जॉच के कम में यह पाया गया कि वितीय वर्ष (2009-10) (2010-10) को वेतन नामावली पर शिक्षक का हस्ताक्षर नहीं है । इस संबंध में निलंबित शिक्षक को बताया कि बेतन शिक्षक को बैंक खाता के माध्यम से भुगतान होता है ।
4. पुछताछ के कम में निलंबित शिक्षक ने बताया कि विभागीय बैठक में भाग नहीं लेने वाली बात निराधार है । मैं बैठक में भाग लेता हूँ । पढा-कढा विपत्र कार्य से कोषागार जाने पर अपने प्रतिनिधि को भेजता हूँ ।
5. निलंबित शिक्षक का लिखित स्पष्टीकरण है कि उनके द्वारा वेतन भुगतान में किसी भी प्रकार का भेदभाव नहीं रखा जाता है । विभागीय आदेशनुसार पहले सेवा निवृत्त शिक्षकों का ही अन्तर वेतन को निकासी की जाती है ।

मन्तव्यः— श्री रक्षा राम (प्र० शि०) म० वि० तैलिया बॉध के लिखित स्पष्टीकरण को अग्रसारित करते हुए निलंबन



एवं निकासी व्ययन पदा० के कार्य से मुक्त करने की
अनुशंसा की जाती है ।

विश्वासभाजन

ह०/—अस्पष्ट

प्रखंड शिक्षा पदा०

बैकुण्ठपुर गोपालगंज

28.04.2012

4. Thus from perusal of Annexure-5, it further appears that there is no finding of guilt recorded by the enquiry officer to the contrary he has simply forwarded the explanation of the petitioner and recommended for withdrawal of order of suspension of the petitioner and on the basis of that Annexure-5, the order inflicting major punishment was passed, which was upheld by the appellate authority.

5. In view of the fact that there was no finding of guilt against the petitioner by the enquiry officer, the order inflicting major punishment by the disciplinary authority contained in Annexure-6 suffers from the vice of non-application of mind, as such it cannot sustain. The order of the appellate authority also suffers from the same vice of lack of application of mind and, as such, the order contained in Annexure-7 is also illegal and unsustainable in law.

6. Accordingly, Annexures- 6 and 7 are hereby quashed. The respondents are directed to restore all the benefits to the



petitioner, as if Annexures-6 and 7 never existed. Necessary order for grant of consequential benefits on quashing of Annexures- 6 and 7 may be passed by the respondents within a period of four months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2018
Transmission Date	

