

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13946 of 2014

=====

Chandra Shekhar Singh Son of Late Phuleshwar Singh Resident of Village-
maina, P.S.- Manishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna. null null
3. The Director, Primary Education, Primary Education Directorate, Education Department, Bihar, Patna.
4. Teh Regional Deputy Director, Education, Saharsa.
5. The District Magistrate, Supaul.
6. The District Education Officer, Supaul.
7. The District Programme Officer (Establishment), Supaul.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha-3
For the Respondent/s : Mr. Gp2-Rajiv Kumar Singh

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 18-09-2018

This writ petition was filed with two advance copies to the office of Advocate General but even after expiry of more than four years no counter affidavit has been filed.

2. The writ petition involves challenge as to the validity of the order of punishment contained in Annexure-1 dated 15.07.2013.

3. Learned counsel appearing on behalf of the petitioner has drawn attention of this Court to the order passed by the Disciplinary Authority contained in Annexure-1.

4. From perusal of the Annexure-1, it appears



that petitioner was inflicted stoppage of two increments without cumulative effect and petitioner is not entitled to payment of anything except subsistence allowances paid to the petitioner during the period of suspension.

5. Learned counsel appearing on behalf of the petitioner submits that five charges were framed against the petitioner. Against all the norms, departmental enquiry was conducted. In the departmental proceeding in order to establish charges neither any document was adduced and exhibited on behalf of the prosecution nor any witnesses were examined to support the charges levelled against the petitioner.

6. Apart from the aforesaid infirmity, learned counsel referring to Annexure-4 highlighted that the Presenting Officer in the case of the petitioner was District Education Officer, Supaul and the Regional Deputy Director of Education was Conducting Officer.

7. Referring to page 33 he has drawn attention to the Court that the enquiry report was in fact prepared by the Presenting Officer and the Conducting Officer has put his initial and seal on the enquiry report. In addition thereto, Mr. Jha submitted that the enquiry report is not fact finding and it is based on mere opinion of the Enquiry Officer. Such opinion



does not partake the character of enquiry report. The infirmity in the matter of conduct of the departmental proceeding goes to the root of the case. In the case of **Humanyu Mandal vs. Girija Shankar Pant reported in 2001(1) SCC 182** the Apex Court has occasion to discuss the essential components of the departmental proceeding. Testing the case of the petitioner at the touchstone of the principle discussed by the Apex Court in Girja Shankar Pant (supra), the Court is of the view that the enquiry was not conducted in accordance with either Bihar Governments Servant (CCA) Rules, 2005 or the norms and the principle discussed by the Apex Court in Girja Shankar Pant(Supra).

8. From perusal of the enquiry report particularly at page 33 there is no manner of doubt that enquiry is vitiated as enquiry report was prepared by the Presenting Officer and not by the Enquiry Officer.

9. Considering the enquiry report contained in Annexure-4, the Court is not persuaded to accept the enquiry report as the enquiry report was prepared by the Presenting Officer and not by the Enquiry Officer and as such there is complete violation of principle of natural justice and fair play, inasmuch as, the Presenting Officer became Enquiry Officer and



he has recorded the findings against the petitioner.

10. The role of Enquiry Officer is of a judicial authority. He is expected to act independently and not as an agency of the prosecution or the disciplinary authority. The manner in which the enquiry report was prepared by the Presenting Officer and signed by the Enquiry Officer leaves no room for doubt that the enquiry was only an empty formality based on such enquiry report, the order contained in Annexure-1 cannot sustain. It is accordingly, quashed.

11. The respondents are directed to restore the benefit available to the petitioner on quashing of Annexure-1 including the payment of salary for the period of suspension.

12. Final decision on the claim of the petitioner after quashing of Annexure-1 must be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order.

13. With the aforesaid, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2018
Transmission Date	

