

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10698 of 2014

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Smt. Prema Mishra wife of Sri Satish Chandra Mishra resident of Sati Bhagirath Smiriti Bhawan, Naya Tola, Madhopur, P.S. - Bakhtiyarpur, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Primary Education Department, Vikash Bhawan, Patna.
2. The Director, Primary Education Department, Government of Bihar, New Secretariat, Patna.
3. The District Education Officer, Buxar, District - Buxar.
4. The District Superintendent of Education, Buxar, District - Buxar.
5. The Deputy Development Commissioner, Buxar.
6. The Area Education Officer, Buxar.
7. The Block Education Extension Officer, Buxar.
8. The Headmaster, Primary School , Isari Sri Ram, District - Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Janardan Prasad Singh, Sr. Advocate
		Mr. Dipak Kumar, Advocate
For the State	:	Mr. Kumar Alok SC-7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 20-11-2018

Heard Mr. Janardan Prasad Singh, senior counsel appearing on behalf of the petitioner and Mr. Kumar Alok, learned Standing Counsel No. 7 appearing on behalf of the State.

2. Pursuant to the orders dated 26.9.2018 and 26.10.2018 a counter affidavit has been filed on behalf of the respondents. The District Programme Officer is also physically present in Court. In order to appreciate the issue involved in the present writ petition, it would be appropriate to refer to the orders dated 26.9.2018 and 26.10.2018. The aforesaid two orders are quoted below for ready reference.



26.09.2018

Heard Mr. Janardan Prasad Singh learned senior counsel appearing on behalf of the petitioner and learned counsel for the State.

Mr. Singh with reference to Annexure-A to the counter affidavit submitted that the action of the respondents is gross contempt of this Court. The order which was quashed by this Court in CWJC No. 4232 of 2004, vide order dated 18.1.2011, was revived by the respondents in the meeting of the Education Establishment Committee dated 3.10.2016. The order of revival of a quashed order, prima facie, appears to be gross contempt.

However, learned counsel appearing on behalf of the respondents submits that he has filed counter affidavit earlier but after filing of I.A. No. 6920 of 2018, the respondents have to file additional counter affidavit. He prays for two weeks time.

Put up this case on 26th of October, 2018.

By that time the respondents have to file additional counter affidavit so that the writ petition may be disposed of. The respondents have to explain how they can pass order of dismissal after superannuation of the petitioner when the relationship of master and servant has come to an end.

26.10.2018

Despite indulgence granted by this Court vide order dated 26.09.2018, the respondents have not filed any additional counter affidavit.



From the order dated 26.09.2018, it would appear that after superannuation of the petitioner on the basis of master and servant relationship, the order of dismissal was passed.

At the request of the respondents, four weeks' time was granted to file additional counter affidavit, but no additional counter affidavit has been filed. Today, a prayer has been made for grant of two weeks' further time. As noted in the order dated 26.09.2018, the impugned order in effect is gross contempt of the Court and in view of the law laid down by the Apex Court any order in teeth of the direction issued by the Court is nullity and void and cannot sustain. In addition thereto after master and servant relationship, the respondents have no authority to pass order of dismissal.

In order to provide one more opportunity, the case is adjourned for 19.11.2018. On that day the additional counter affidavit would be filed on behalf respondents failing which they are liable to pay cost of Rs.10,000/- and the District Education Officer, Buxar is required to be physically present along with the relevant records to assist the Court in the matter of final disposal of the case.

Put up this case on 19.11.2018.

3. This Court has clarified in most unambiguous terms that after cessation of master-servant relationship, no punishment can be inflicted and the Court accordingly directed the respondents



to enlighten the Court whether the respondents have any jurisdiction to inflict punishment of dismissal after cessation of master-servant relationship. Today, in the counter affidavit in paragraph nos. 5 to 8 following stand has been taken:-

“5. That the petitioner was earlier filed writ application bearing CWJC no. 4232/2004 for quashing the dismissal order dated 05.07.2003 which was disposed of on 18.01.2011 and quash the said order of dismissal and remand the matter back to the District Establishment Committee to reconsider the enquiry reports and will take its decision and pass a reasoned order, after giving proper opportunity to the petitioner. The matter should be disposed of within a period of four months, after the files her additional written statement.

6. That in compliance of the above order, the deponent had send a letter to the petitioner and directed to file additional written statement regarding the initiated charged against the petitioner by the then DSE, Buxar vide letter no. 1009 dated 18.07.2016 in pursuant to the meeting was held by the District Education Establishment Committee, Buxar on 28.06.2016. The petitioner was physically present in the office of deponent on 19.07.2016 and prayed for one week time for filing of additional written statement, which was granted. Thereafter, the petitioner was physically present in office on



29.07.2016 and submitted additional written statement.

7. That it is stated that the meeting was held by the District Education Establishment Committee, Buxar on 03.10.2016 and has taken decision on the basis of records/documents, enquiry report submitted by the enquiry officer, additional written statements with documents submitted by the petitioner. The allegations against Mrs. Mishra were verified while no concrete evidence was provided by Mrs. Mishra in her defence so that the allegations formed against her could be denied. Keeping in mind the principle of natural justice, while providing the last chance, the petitioner was demanding evidence to break the allegations but no evidence was provided by Mrs. Mishra. Therefore, the decision to satisfy the decision taken earlier on the basis of available evidence was taken unanimously.

8. That it is stated that deponent has passed the order in compliance of the order dated 18.01.2011 passed in CWJC No. 4323 by this Hon'ble Court, in the meeting of District Education Establishment Committee on 03.10.2016, consultation with committee unanimously, the order of the dismissal of petitioner issued by the then DSE, Buxar vide memo no. 1177 dated 05.07.2003 is revived as valid."

4. There is no answer to the legal proposition that master-servant relationship ceases to exist after superannuation and once the petitioner superannuated, the employer has absolutely no



jurisdiction to inflict punishment yet instead of gracefully accepting the legal position, the respondents have contested and tried to justify the order impugned in the present writ petition.

5. The office orders, Annexure-A and B to the counter affidavit inflicting the punishment after remand on quashing the previous order in CWJC No. 4232 of 2004, is nullity in the eye of law for two fold reasons. Firstly, after superannuation, no order inflicting punishment in departmental proceeding is permissible. Secondly, the order impugned indicates not only total non-application of mind but also indicates mala fide on the part of the respondents in reiterating the same reason in the impugned order which was quashed by this Court. There is no whisper in the impugned order that the detailed explanation filed by the petitioner as contained in Annexure-31, has been considered while passing the impugned order and as such the order is not only without jurisdiction but also indicates total non-application of mind. It is celebrated example of institutional bias. The Court cannot approve such act/decision.

6. It is not in dispute that the petitioner had superannuated before issuance of the orders inflicting punishment, as contained in Annexures A and B of the counter affidavit. The petitioner superannuated on 31.01.2012 while the office order



inflicting punishment of dismissal was issued on 3.10.2016 and 18.10.2016 i.e. after more than four years of superannuation of the petitioner. Even proceeding under Rule 43B of the Bihar Pension Rules is not permissible after four years of superannuation and as such the order inflicting punishment is unsustainable in law.

7. Considering the totality of the fact situation, the Court cannot approve the orders inflicting punishment dated 3.10.2016 (Annexure-A) and 18.10.2016 (Annexure-B), they are accordingly quashed. The respondents have to proceed as if Annexures A and B never existed and consequential benefits of quashing Annexures A and B must reach the petitioner within a maximum period of four months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.11.2018
Transmission Date	NA

