

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13336 of 2014

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Dinesh Kumar Singh, son of late Baliram Singh, resident of village and post office- Rajuwar, Police Station- Daudpur, District- Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat Building, Bailey Road, Patna- 800 001
3. The District Magistrate, Saran
4. The District Education Officer, Saran, District Saran
5. The District Programme Officer (Establishment), Saran, District- Saran
6. The District Programme officer (Accounts & establishment), Saran, District Saran
7. The District Programme officer (Sarv Shiksha Abhiyan), Saran, District Saran
8. The Block Education Extension Officer, Manjhi Block, District- Saran
9. The Block Education Extension Officer, Block Dighwara, District Saran
10. The Regional Deputy Director of Education, Saran Division, Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate. Mr. Sanjay Kumar Verma, Advocate. Mr. Rajeev Kumar Singh, Advocate. Mr. Nirala Kumar, Advocate.
For the State	:	Mr. Syed Hussain Majeed, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 02-11-2018

Re.: Interlocutory Application No.7793 of 2018

For the reasons stated in the interlocutory application, the prayer for adding the Regional Deputy Director of Education, Saran Division, Chapra as party respondent is allowed. Let him do so in course of the day.

Re.: C.W.J.C.No. 13336 of 2014

2. Heard Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner and Mr. Syed Hussain Majeed, learned counsel appearing on behalf of the



State.

3. The petitioner is aggrieved by the order of punishment passed by the respondent no. 5 and the appellate order passed by the Regional Deputy Director of Education, Saran Division, Chapra (who has been made party respondent vide I.A.No. 7793 of 2018) contained in Annexure 18 and 19, whereby the respondent no. 5 has inflicted punishment of dismissal from service and on appeal, the Regional Deputy Director of Education, Saran Division, Chapra has approved the order inflicting punishment of dismissal.

4. The factual matrix relevant for deciding the present writ application lies in a narrow compass. The petitioner was posted as Assistant Teacher. At the relevant point of time, the District Magistrate directed the District Programme Officer to take disciplinary action against the erring teachers who were found absent during inspection and initiate departmental enquiry. The District Programme Officer issued Memo No. 01 dated 02.01.2013 by which the petitioner was placed under suspension (Annexure-2) and he was informed that Prapatra 'K' shall be issued separately.

5. From the pleadings, it appears that after hearing about the order of suspension, petitioner approached the



respondent – District Programme Officer for supply of information with regard to the news about suspension of the petitioner. The petitioner was subjected to departmental enquiry vide Memo No. 1100 dated 21.03.2013 (Annexure-4). On 18.04.2013 (Annexure-5), a criminal case was registered against the petitioner at the instance of the District Programme Officer, Saran for the offence under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and a departmental proceeding was initiated against the petitioner. He was asked to submit his explanation. Thereafter the petitioner submitted his explanation, which was not accepted and then hearing in the enquiry commenced. After completion of the enquiry, a report was submitted by the Enquiry Officer. After the receipt of enquiry report, the disciplinary authority issued second show cause notice, annexing copy of the enquiry report. The petitioner furnished his explanation to the second show cause notice and thereafter, petitioner was inflicted punishment of dismissal from service vide order contained in Annexure-18 dated 12.01.2013. The petitioner preferred appeal before the Regional Deputy Director of Education, Saran Division, Chapra. The appellate authority dismissed the appeal and approved the order of dismissal of petitioner vide Memo No. 310 dated



09.05.2014.

6. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner has submitted that the entire departmental proceeding was conducted in most arbitrary manner and mere formality was completed. The respondents have inflicted punishment of dismissal from service without following the due procedure required under the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the '2005 Rules'). He has submitted that in order to establish the charges, no evidence was led, neither documentary nor any oral witness was adduced to bring home the charge against him and petitioner was inflicted major punishment in complete disregard to the principle of natural justice; fair play and in teeth of the statutory provisions of 2005 Rules. He has contended that the appellate authority has also perpetuated the same illegality by dismissing the appeal of the petitioner. He has also submitted that in fact the entire exercise was nullity as the District Programme Officer is not competent to take any decision in the departmental proceeding against the petitioner. It is the District Education Establishment Committee, headed by the District Magistrate, who is competent to take appropriate disciplinary action against the Assistant



Teachers as the petitioner was appointed in 1994 as an Assistant Teacher against regular post.

7. On perusal of materials available on record, the Court finds that the action of the respondents inflicting punishment is against the rules, there is violation of principle of natural justice as well as breach of 2005 Rules.

8. This Court has noticed that the enquiry officer has completed only formality in the instant case in the matter of enquiry. The Law in this regard is well settled. The departmental proceeding is not an anti formality. In a departmental proceeding, when enquiry is entrusted to other than the disciplinary authority, the enquiry officer is required to exercise the power of a *quasi judicial* authority and as such he is required to record reason for his finding. Way back in 1964, when the Constitution Bench of the Apex Court, in case of ***Union of India vs. H.C.Goel*** reported in ***AIR 1964 SC 364***, held that case like criminal trial has to be followed while inflicting punishment in a departmental proceeding. The decision of the Apex Court was meant for consideration of all concerned with the departmental proceeding. The relevant part of the judgment of the Apex Court in the case of ***H.C.Goel*** (supra) in para 27 is quoted hereinbelow for ready reference;

“27. Now, in this state of the evidence, how can it be said



that the respondent even attempted to offer a bribe to Mr. Rajagopalan. Mr. Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr. Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr. Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr. Rajagopalan is a straight forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge no. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the U.P.S.C. considered the matter twice and came to the firm decision that the main charge against the respondent had not been established (underline for emphasis).

9. Once again, after the judgment, in ***Khem Chand v.***



Union of Inida and Ors. reported in *AIR 1958 SC 300*, the Apex Court has elaborately discussed the procedural requirement in conduct of departmental proceeding, in the case of *Kumaon Mandal Vikas Nigam Limited vs. Girija Shankar Pant* reported in *2001(1) SCC 182*, wherein the Apex Court has succinctly discussed the procedural formality required for departmental proceeding.

10. In the light of the judgments of the Apex Court, discussed hereinabove, this Court is of the considered view that enquiry was not conducted in accordance with the norms prescribed under the 2005 Rules or the principle laid down by the Apex Court for conducting departmental proceeding and inflicted major punishment. The Apex Court has occasioned to examine the effect of infirmity in the conduct of departmental proceeding. The Constitution Bench of the Apex Court, in the case of *Managing Director, DCIL, Hyderabad vs. B. Karunakar* reported in *1993(4) SCC 727*, has laid down that in case of procedural impropriety, the order has to go and the proceeding has to be initiated afresh from the stage of infirmity noticed. In the instant case, the Court is of the considered view that the infirmity is from the very stage of enquiry itself and, therefore, *de novo* enquiry is required.



11. Mr. Singh has placed reliance on the judgment of the Apex Court reported in the case ***Roop Singh Negi vs. Punjab National Bank & Ors.*** reported in ***(2009) 2 SCC 570***, to contend that petitioner shall be entitled to the benefit of reinstatement in service as the respondents have acted in violation of principle of natural justice while inflicting punishment of dismissal.

12. In view of the judgment of the Constitution Bench in ***B.Karunakar*** (supra) case, the order of dismissal of the petitioner, contained in Annexure-18 as well as Annexure-19 cannot sustain, the petitioner would be restored to the position which was available to him prior to infliction of punishment contained in Annexure-18. However, the respondents authorities are required to complete the departmental proceeding afresh from the stage of inquiry after following the principle laid down by the Apex Court in the case of ***Girija Shankar Pant*** (supra) and the Rule particularly Rules 17 and 18 of the 2005 Rules, and conclude the same at the earliest preferably within a period of six months from the date of receipt/production of a copy of this order, failing which petitioner shall be treated to be reinstated in service with all consequential benefits.

13. In the meanwhile, the petitioner would be entitled



to subsistence allowance in terms of the 2005 Rules on the basis of status prior to his dismissal, as contained in Annexure-18.

14. With the aforesiad, the writ application stands allowed.

(Anil Kumar Upadhyay, J)

sujiit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

