

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15075 of 2014

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1. Meera Devi, Wife of late Basant Narayan Singh, Resident of Village and P.O. Gavirar, P.S. Raghunathpur, District- Siwan (Bihar).
 2. Sanju Singh, Daughter of late Basant Narayan Singh , Wife of Umesh Singh, Resident of Village- Santhi, P.S.- Raghunathpur, District- Siwan.
 3. Shailendra Kumar Singh, Son of late Basant Narayan Singh
 4. Vipendra Kumar Singh, Son of late Basant Narayan Singh,
Both Residents of Village and P.O. Gavirar, P.S. Raghunathpur, District Siwan (Bihar).
 5. Archana Singh, Daughter of late Basant Narayan Singh and Wife of Niraj Singh, Resident of Village- Sonhaura, P.S.- Guthni, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director (Secondary Education), Government of Bihar, Patna
4. The Deputy Director (Secondary Education), Government of Bihar, Patna
5. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
6. The District Education Officer, East Champaran, Motihari
7. The District Programme Officer (Planning & Accounts), Office of the District Education Officer, East Champaran, Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Dr. Mayanand Jha, Advocate
Mr. Raj Narayan Mishra, Advocate
For the Respondent/s : Mr. Aditya Nath Jha, AC to SC-18

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 05-11-2018

Heard Mr. Mayanand Jha, learned counsel for the
petitioners and the State.

2. The original petitioner, namely, Basant Narayan
Singh, was aggrieved by the order inflicting punishment contained in
Memo No. 3643 dated 29.11.2013 (Annexure-10) and the Appellate



order as contained in Memo No. 1491 dated 19.05.2014 (Annexure-12).

3. Mr. Jha has invited the attention of the Court to the order inflicting punishment. He submitted that the petitioner was inflicted punishment of stoppage of one increment with cumulative effect, which is categorized as major punishment under Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and the petitioner was cautioned for future and also inflicted punishment to the effect that the petitioner shall not be entitled to payment of salary except for subsistence allowance for the petitioner of suspension.

4. From Annexure-8, it appears that the disciplinary authority differed with the finding and thereafter issued second show-cause notice. The petitioner has furnished his explanation to the second show-cause notice. Unfortunately, while differing with the finding recorded by the enquiry officer and inflicting punishment, the disciplinary authority has not discussed the explanation furnished by the petitioner in reply to the second show-cause notice. He has not discussed even the favourable report of the enquiry officer, which was not accepted by the disciplinary authority while issuing second show-cause notice. Inflicting major punishment in departmental proceeding



requires not only full dressed enquiry, but the disciplinary authority is required to assign reason to demonstrate application of mind while taking decision inflicting punishment, particularly differing with the enquiry report. From perusal of Annexure-10, no reasonable man can understand that the disciplinary authority while inflicting punishment and rejecting the explanation furnished by the petitioner to the second show-cause reply has applied his mind.

5. The office order inflicting punishment dated 29.10.2013 is quoted herein below for ready reference:

ANNEXURE - 10

बिहार माध्यमिक शिक्षा कार्यालय, बुद्धमार्ग, पटना।

कार्यालय आदेश

श्री बसंत नारायण सिंह, प्रभारी प्रधानाध्यापक, श्री शिवधर अनूठा उच्च विद्यालय कोटवा, पूर्वी चम्पारण जिन्हें कार्यालय ज्ञापांक – 823 दिनांक— 30.03.2013 द्वारा निलंबित करते हुए विभागीय कार्यवाही के अधीन किया गया था को क्षेत्रीय शिक्षा उप निदेशक, तिरहुत प्रमण्डल, मुजफ्फरपुर (सह जाँच पदाधिकारी) के पत्रांक – 176 दिनांक – 26.08.2013 द्वारा प्राप्त जाँच प्रतिवेदन के आधार पर श्री सिंह से कार्यालय पत्रांक – 3441 दिनांक – 29.10.2013 द्वारा द्वितीय कारण पृच्छा किया गया।

श्री सिंह द्वारा प्राप्त स्पष्टीकरण एवं जाँच प्रतिवेदन पर समीक्षा की गई, समीक्षोपरान्त श्री सिंह पर लगाए गये दोनो आरोप प्रमाणित पाये गये। प्रमाणित आरोपों के लिए निम्नलिखित दण्डों के साथ श्री सिंह को निलंबन एवं विभागीय कार्यवाही से मुक्त किया जाता है।

- 1— श्री सिंह को भविष्य के लिए चेतावनी दी जाती है।
- 2— निलंबन अवधि में जीवन निर्वाह भत्ता के



अतिरिक्त वेतन देय नहीं होगा।
3— एक वार्षिक वेतन वृद्धि संचयात्मक प्रभाव से
अवरूद्ध रहेगा।

निदेशक
(मा० शि०),
बिहार, पटना।

6. After the decision of the disciplinary authority, the petitioner filed appeal before the Principal Secretary of the Department. The Principal Secretary of the Department has simply noted the fact and in a most casual and appologetic manner discussed the ground set out by the petitioner in the appeal.

7. Considering the fact that the order inflicting punishment was non-speaking order, the Court cannot approve such order, as the reasoning is the essence of the order as held out by the Apex Court and also third principles of natural justice. Reference in this regard is to be made to the Constitution Bench judgment of the Apex Court in the case of **S. N. Mukherjee Vs. Union of India & Ors.**, reported in **AIR 1990 SC 1984**.

8. In view of the Constitution Bench judgment of the Apex Court in the case of **S. N. Mukherjee** (supra) and on consideration of the impugned order, the Court is of the considered view that the order inflicting punishment (Annexure-10) is non-speaking and there is lack of application of mind and as such the order inflicting punishment cannot sustain. The Appellate order as



contained in Annexure-12 is only discussion of fact in a casual manner, as the Appellate Authority has dismissed the appeal, which does not satisfy the requirement of a reasoned order.

9. As a result Annexures- 10 and 12 are hereby quashed. The respondents are directed to work out the consequential benefits arising on account of quashing of Annexures-10 and 12 within a period of four months from the date of receipt/production of a copy of this order.

10. Consequential benefit must be extended to the substituted petitioners, as the original petitioner died during the pendency of the writ application.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2018
Transmission Date	

