

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13048 of 2014

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Yogendra Paswan S/o Late Ganpat Paswan, Resident of Village Mamai,
Police Station Asarganj, District Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Education Officer, Munger.
4. The District Programme Officer (Establishment), Munger.
5. The Sub Divisional Education Officer, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate
		Mr. Javed Aslam, Advocate
For the Respondent/s	:	Mr. Gyan Shankar, AC to GP 2

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 22-11-2018

Heard Mr. Yogesh Chandra Verma, learned Senior Counsel appearing for the petitioner and learned counsel appearing for the respondents.

The petitioner is aggrieved by office order contained in Memo No. 532 dated 26.02.2010 inflicting upon him major punishment of stoppage of two annual increments with cumulative effect, censure, non-payment of salary for the period of suspension and punishment that the petitioner shall not hold the post of Headmaster-cum-Drawing & Disbursing Officer in future.

From the order of punishment which is the subject matter of scrutiny in the present writ petition, it appears that the



petitioner has been proceeded against on the basis of charges submitted by the District Superintendent of Education, Munger. After the enquiry report, second show cause notice was issued to the petitioner vide Annexure-9, the office order contained in Memo No. 206 dated 23.10.2010. The second show cause notice purportedly issued differing with the finding of the enquiry officer does not serve the requirement of assigning reason and opportunity of hearing on the point of difference. It is true that finding of the enquiry officer is not binding on the disciplinary authority, disciplinary authority, in appropriate case he may differ with the finding of the enquiry officer, but while differing with the finding he is required to assign reason and provide opportunity of hearing so that the delinquent may have the opportunity to persuade the disciplinary authority in respect of favourable finding of the enquiry officer. The Apex Court has laid down the principle to be followed in this regard in the case of *Punjab National Bank vs. Kunj Behari Misra [(1998) 7 SCC 84]* where it is decided that in case the disciplinary authority differs with the finding of the enquiry officer in favour of the delinquent employee reasons for disagreement have to be assigned.

While framing the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter



referred to as '2005 Rules') specific provision has been engrafted in Rule 18 of 2005 Rules where the disciplinary authority is obliged to follow the procedure consistent with the principles laid down by the Apex Court in the case of ***Kunj Behari Misra*** (supra).

From perusal of Annexure-9 no prudent man can approve the second show cause notice consistent with the direction of the Apex Court in the case of ***Kunj Behari Misra*** (supra) or consistent with the provision of Rule 18 of the 2005 Rules. After the show cause notice when the petitioner submitted his reply the District Superintendent Education Officer, Munger has issued office order inflicting punishment. Under 2005 Rules stoppage of increment with cumulative effect is major punishment and as such cannot be inflicted without following the rigors of departmental proceeding. In this case, firstly, the Court finds that the order inflicting punishment is non-speaking. The Constitution Bench of the Apex Court has held out that reason is the third principles of natural justice. Reference in this connection may be made to the case of ***S N Mukherjee vs. Union of India [AIR 1990 SC 1984]***. Secondly, the Court does not approve of the order contained in Annexure-11 inflicting punishment which was issued without complying with the requirement of law in ***Kunj Behari Misra's*** case and in teeth of Rule 18 of the 2005 Rules cannot sustain. In



addition thereto, the Court finds that the petitioner could not have been punished by the District Superintendent of Education, Munger. Under the Rules, the power vests with the District Education Establishment Committee, Munger of which the District Education Officer is only a member and he does not have the jurisdiction to pass such order.

For the aforesaid reasons, the Court cannot approve the order contained in Annexure-11 which is accordingly quashed. As a consequence, the petitioner shall be entitled to restoration of all benefits. However, quashing of Annexure-11 will not come in the way of the respondents to take fresh decision in accordance with law if otherwise permissible in law from the stage of second show cause notice.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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