

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7702 of 2014

=====

Shri Bhatto Harijan, son of Late Bilachan Harijan, resident of village Radha Nagar
English More, P.S. Amarpur, District Banka

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Education Department, Govt.
of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The District Education Officer, Banka
4. The District Programm (Estb.) Officer, Banka

.... Respondent/s

With

=====

Civil Writ Jurisdiction Case No. 9847 of 2014

=====

Ganesh Rajak, S/o Late Kamleshwari Rajak, Resident of Prem Nagar Sabour, P.S.
Sabour, District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna
2. The Director Primary Education, Bihar, Patna
3. The District Education Officer, Banka.
4. The District Programm (Estb) Officer, Banka.

.... Respondent/s

=====

Appearance :

(In CWJC No.7702 of 2014)

For the Petitioner/s : Mr. Shailendra Kumar Singh

For the Respondent/s : Mr. Pawan Kumar, AC to GA-1

(In CWJC No.9847 of 2014)

For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate

For the Respondent/s : Mr. KUNDAN BHADUR SINGH

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 31-10-2018

Heard learned counsel for the petitioners and
respondents.

2. In both the writ application, same issue is involved.

The enquiry officer has recorded the finding in favour of the



petitioners, but notwithstanding favourable report in the enquiry, the disciplinary authority has inflicted major punishment of stoppage of three increments with cumulative effect.

3. The law in the matter of distinction of disciplinary authority in differing with the finding of the enquiry officer is well settled in the case of **Punjab National Bank Vs. Kunj Behari Misra**, reported in **1998 (7) SCC 84** where the Apex Court has categorically held out that in case the disciplinary authority differs with the findings recorded by the enquiry officer, opportunity of hearing on the point of difference is required to be provided to the delinquent employee before taking any action in the departmental proceeding.

4. The respondents have framed Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 where Rule 18 provides definite procedure to be followed in the matter the disciplinary authority differs with the finding recorded by the enquiry officer. Unfortunately, no such course was adopted by the respondents while inflicting punishment differing with the finding recorded by the enquiry officer in favour of the petitioners.

5. In view of the law laid down in the case of **Kunj Behari Misra** (supra) and the requirement under Rule 18 of Rules, 2005, the order inflicting punishment contained in Annexure-1 cannot sustain. Accordingly, order inflicting punishment is quashed. The



respondents are hereby directed to restore the benefit on quashing of Annexure-1 to the petitioners within a maximum period of four months from the date of receipt/production of a copy of this order.

6. With the aforesaid, both the writ applications stand allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.11.2018
Transmission Date	

