

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6845 of 2016**

Subodh Kumar Yadav Son of Late Laxmi Narayan Yadav Resident of  
Mohalla - Navratan Hatta, Police Station K. Hat, District - Purnia

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Primary Education, New Secretariate, Baily Road, Patna
2. The Director, Primary Education, New Secretariate, Baily Road, Patna
3. The District Magistrate, Purnea
4. The Regional Deputy Director, Purnia Division, Purnia
5. The District Education officer, Purnia
6. The District Program officer, Purnia
7. The District Program officer, Primary Education Purnia Cum - Presiding Officer, Purnia
8. The Block Education officer, Purnia Sadar Purnea

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar Singh  
For the Respondent/s : Mr. Ajay Bihari Sinha- Sc19

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL JUDGMENT**

**Date : 02-05-2018**

Heard learned counsel for the petitioner and the counsel  
appearing on behalf of the State.

2. Mr. Sanjay Kumar Singh, learned counsel appearing on  
behalf of the petitioner submits that the order contained in Memo No.  
2504 dated 12.8.2015 issued by the respondent no.7 is arbitrary exercise  
of the power. He has prayed for staying final decision in the  
departmental proceeding. However, during the pendency of the  
departmental proceeding final decision was taken by the respondents and  
petitioner was inflicted punishment of dismissal.



3. Vide order contained in Annexure-17 dated 9.3.2018, Mr. Singh has advanced manifold submission to assail the conduct of the departmental enquiry. He submits that respondents have not conducted departmental proceeding in accordance with law and only window dressing was completed. In the departmental proceeding, no witness was examined to prove charges and only because there was allegation of bigamy the petitioner was condemned.

4. The elementary principle of law was not followed while conducting departmental enquiry. The complainant was necessary witness but the complainant was not examined in the case and complaint was taken as gospel truth by the conducting officer.

5. Referring to enquiry report contained in Annexure-10 he submits that the enquiry report is vague and there is no definite finding of guilt against the petitioner even the charge as to the forged certificate has not been established in the present case. Referring to the Annexure-A he submits that at the relevant time respondents have decided to stay departmental proceeding on account of the fact that a criminal case on the same charge was pending. Later on, enquiry was conducted in hot haste and without establishing guilt of the petitioner in the departmental proceeding in accordance with law petitioner was inflicted punishment of dismissal.



6. After going to the materials available on record, the court finds substance in the submission of Mr. Singh that proper enquiry was not conducted. There was procedural lapses on the part of the respondents in holding the petitioner guilty. Such enquiry report cannot serve purpose of enquiry and the action taken on the enquiry report which suffers from the vice of procedural impropriety is unsustainable. Undisputedly the enquiry officer has not conducted the departmental proceeding in accordance with settled norms of departmental enquiry. The basic law in the matter of departmental proceeding is that charges has to be established on the basis of preponderance of probability. In case of departmental proceeding strict proof like criminal case is not required but nonetheless in the departmental proceeding, respondents are required to establish the charges particularly in the case when the departmental proceeding is based on the same set of fact where criminal case is based and criminal case is pending.

7. Learned counsel appearing on behalf of the respondents submits that petitioner has alternative remedy by way of appeal and as such the present writ petition does not meant any consideration.

8. On consideration of the rival submission and on perusal of the record, the court is of the view that enquiry was not conducted in accordance with settled principle of law. The Apex Court has occasion to examine the scope of departmental proceeding in the case of **Kumaon**



**Mandal Vikas Nigam Ltd. V/s Girija Shankar Pant reported in (2001) 1 SCC 182** where the Apex Court has enumerated the condition for holding fair departmental proceeding. It is to be noted here that way back on 1964 the Apex Court has occasioned to examine the standard of care to be taken in conduct of departmental proceeding in the case of **Union Of India V/s H.C. Goel AIR 1964 SC 364** where the Apex Court has held out that are like criminal trial has to be followed in the matter of departmental proceeding on the line of the judgment rendered by the Supreme Court in the case of **Girija Shankhar Pant (Supra) and H.C. Goel (Supra)**, the Court is of the view that departmental proceeding is not empty formality, respondents are required to establish the basic case against the petitioner and they have to hold the petitioner guilty after following the principle of natural justice and fair procedure which is the sine qua non of the departmental proceeding.

9. In the totality of facts situation, when the Court notices various infirmities including the non-examination of the relevant witnesses including the complainant which rendered the petitioner helplessness as petitioner was not provided opportunity to cross examine the witnesses whose statement was the basis of holding the petitioner guilty.

10. In view of the above, the Court is of the view that the departmental proceeding was not fairly conducted and it suffer from the



vice of procedural impropriety. The Court in the aforesaid facts and circumstances cannot approve the decision of the respondents dismissing the petitioner vide Annexure-17. However, in view of the judgment of the Constitution Bench in the case of **Managing Director, ECIL, Vs. B. Karunakar reported in (1993)4 SCC 727** the Court is constrained to direct the respondents to start departmental proceeding a fresh from the stage of examination of the witnesses and conclude the departmental proceeding within a period of six months from the date of receipt/production of a copy of this order. The consequential benefit on quashing of Annexure-17 would abide by final decision in the fresh departmental proceeding.

11. The writ petition is allowed to the extent as indicated above.

**(Anil Kumar Upadhyay, J)**

Ravi/-

|                   |          |
|-------------------|----------|
| AFR/NAFR          | NAFR     |
| CAV DATE          |          |
| Uploading Date    | 2.6.2018 |
| Transmission Date |          |

