

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15845 of 2012

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Satish Kumar, S/O Late Srichand Sao, R/O Mohalla- Jhingnagar, P.S.- Biharsharif,
Distt.- Nalanda Petitioner/s

Versus

1. The State of Bihar through the Secretary Cum Commissioner, Human Resources Development Department, Govt. of Bihar, Patna
 2. The Director, Primary Education, Govt. of Bihar, Patna
 3. The Deputy Development Commissioner Cum Chairman, District Education Establishment Committee, Nalanda
 4. The District Superintendent of Education, Nalanda, Distt.- Nalanda
 5. The Block Education Extension Officer Cum Enquiry Officer, Harnaut, Distt.- Nalanda
 6. The Drawing and Disbursing Officer Cum Head Master, Middle School, Mohamadpur, Block- Asthawan, Distt.- Nalanda Respondent/s
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Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh, Advocate

For the Respondent/s : Mr. Kinkar Kumar, SC-1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 21-08-2018

Heard learned counsel for the petitioner and State.

2. The petitioner is aggrieved by the order of termination passed by the respondents contained in Annexure-9.

3. Manifold submissions have been advanced by the petitioner challenging the order of termination. Learned counsel appearing on behalf of the petitioner submits that the petitioner was not paid subsistence allowance, despite repeated request and the respondents proceeded against the petitioner and inflicted punishment. He referred to the second show-cause notice (Annexure-8), which indicates that the second show-cause notice was only an empty formality.



4. From perusal of Annexure-8, it appears that second show-cause notice was an empty formality, as the District Education Officer, Nalanda while issuing second show-cause notice has indicated that the decision has been taken to dismiss the petitioner and as such it appears that as a window dressing the second show-cause notice was issued to the petitioner.

5. In the counter affidavit, the Court does not find any statement that the petitioner was paid subsistence allowance during the period of suspension, when the departmental proceeding was pending against the petitioner. The effect of non-payment of subsistence allowance is fatal, as has been held out by the Apex Court in the case of **State of Maharashtra Vs. Chandrabhan Tale**, reported in **AIR 1983 SC 803**, reiterated in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.**, reported in **(1999) 3 SCC 679**, where non-payment of subsistence allowance was held to be fatal and the entire departmental proceeding stands vitiated on account of non-payment of subsistence allowance. In addition thereto Annexure-8 is indicative of the decision taken by the disciplinary authority about the dismissal and after the decision of dismissal taken by the respondent second show-cause notice was issued. It is a kind of post decisional hearing. The post decisional hearing does not satisfy the requirement of principles of natural justice and fair play. Law in



this regard is well settled in the case of **K.I. Shephard & Ors. Vs. Union of India & Ors.**, reported in **AIR 1988 SC 686** and in the case of **H.L. Trehan and Ors. Vs. Union of India and Ors**, reported in **AIR 1989 SC 586** as held out that post decisional hearing does not cure the defect of compliance of principles of natural justice and as such the impugned order in the instant case cannot sustain.

6. It is, accordingly, quashed. However, quashing of the impugned order (Annexure-8) does not preclude the respondents from taking fresh decision after following the principles of natural justice. Provided the entire subsistence allowance payable to the petitioner is paid by the respondents in one go within a period of one month from the date of receipt/production of a copy of this order. Failure of payment of subsistence allowance will disentitle the respondents from taking any further action in departmental proceeding against the petitioner and the petitioner will be entitled to all consequential benefits.

7. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2018
Transmission Date	

