

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5514 of 2013**

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Rajesh Kumar S/O Saryug Prasad R/O Village- Mirjapur, P.S.- Nawadah,  
District- Nawada

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Education, Government Of Bihar, Patna
2. The Director Department Of Primary Education, Government Of Bihar, Patna
3. The Divisional Commissioner, Magadh Division, Gaya
4. The District Magistrate, Nawadah
5. The Regional Deputy Director Of Education Magadh Division, Gaya
6. The District Education Officer, Nawadah
7. The District Programme Officer (Establishment), Nawadah

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Pramod Mishra, Advocate  
For the State : Mrs. Nutan Kumari Sharma, AC to GA-1

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

**Date : 26-11-2018**

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

The petitioner has earlier approached this Court in  
CWJC No. 12951 of 2012 which was disposed of by order dated  
30.7.2012, Annexure-8 in the following terms:-

“The Court finds substance in both the  
contentions on behalf of the petitioner. If by  
reason of acrimony between the petitioner and  
Bisheshwar Prasad Yadav, a common order of  
punishment was passed, there cannot be  
disparity in punishment between him and the  
petitioner. If the allegations against them were



common, there shall have to be parity in punishment/exoneration.

The objection that the departmental proceeding was concluded contrary to law has been noticed but not decided by the Appellate Authority.

The order dated 13.4.2012 is set aside. The matter is remanded to the appellate authority to decide the Appeal afresh on both grounds.

Let such fresh decision be taken within a maximum period of three months from the date of receipt/production of a copy of this order.”

After the aforesaid order, the appellate authority passed order dated 21.11.2012 as contained in Annexure-10 which is under challenge in the instant writ petition. From perusal of Annexure-10 it would be evident that the appellate authority has perpetuated the illegality committed by the disciplinary authority vide order dated 21.12.2006, as contained in Annexure-4.

From perusal of the order of the disciplinary authority as contained in Annexure-4, it appears that the petitioner has been inflicted major punishment of stoppage of one increment with cumulative effect. The law in the matter of inflicting major punishment is well settled. The Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 provides a



detailed procedure for inflicting major punishment which has not been followed in the instant case.

Learned counsel for the petitioner submits that the petitioner has neither been issued any second show cause notice nor provided with a copy of the enquiry report and as such the entire action of the respondents inflicting major punishment is nullity in the eye of law. He further submits that in the instant case the Headmaster and the petitioner as Assistant Teacher were inflicted punishment vide Annexure-4 by the disciplinary authority but the appellate authority has exonerated the Headmaster and maintained the punishment inflicted against the petitioner.

The order in breach of statutory rule for departmental proceeding is nullity. In addition thereto after the judgment in the case of **Union of India and ors vs. Mohd. Ramzan Khan: AIR 1991 SC 471** which was affirmed by the Constitution Bench in the case of **Managing Director Ecil Hyderabad vs B. Karunakar Etc (1993) 3 SCC 727**, the order of punishment without second show cause notice cannot sustain. The appellate order contained in Annexure-10 also suffers from the same vice of non-compliance of principles of natural justice and fair play and in teeth of statutory rule for imposition of major punishment as punishment was inflicted and vide Annexure-10 the appellate authority affirmed the



same and as such the Court is constrained to hold that Annexure-10 also cannot sustain. Accordingly, the order of the disciplinary authority, Annexure-4 and the order of the Appellate authority, Annexure-10 are both quashed. The respondents are directed to restore the benefit of increment as if Annexures 4 and 10 never existed. Necessary consequential order of grant of such benefit must be passed by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order. However, it is made clear that quashing of Annexures 4 and 10 will not disentitle the respondents from taking fresh decision after following the norms for imposition of major punishment.

With the aforesaid, the writ petition stands allowed and disposed of.

**(Anil Kumar Upadhyay, J)**

spandey/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 27.11.2018 |
| Transmission Date | NA         |

