

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9562 of 2016

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Ajay Kumar Son of Late Maheshwar Prasad resident of village + P.O. + P.S.
Kurhani, District - Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
3. The Director, Secondary Education, Govt. of Bihar, Patna
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
5. The District Education officer, Sitamarhi
6. The District Education officer, Vaishali, Hajipur
7. The District Programme officer, Education, Establishment, Vaishali at Hazipur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.

For the Respondent/s : Mr. Alok Ranjan, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-06-2018

Heard Mr. Dhananjay Kumar, learned counsel for the petitioner and Mr. Alok Ranjan, learned AC to AAG-5, for the State.

The petitioner by way of writ petition while questioning the order bearing Memo No. 845 dated 2.7.2015, whereby the petitioner was dismissed from service, has also prayed for quashing the disciplinary proceedings as a whole.

The matter stands discussed in the order recorded on 28.5.2018 and stating briefly, the petitioner feeling aggrieved by the order of dismissal dated 2.7.2015, impugned at Annexure 19, preferred a statutory appeal before the appellate authority i.e. the Director, Secondary Education, who on appreciating the issues raised



by the petitioner, set aside the order of dismissal vide his order bearing Memo No. 2931 dated 24.11.2016, enclosed at Annexure 21 to I.A.No. 1306/2017. A liberty was given to the disciplinary authority i.e. the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to proceed afresh in the matter but in accordance with the provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') as amended from time to time.

Let it be noted that the dismissal order had been questioned by the petitioner, inter alia, on grounds that it was passed without following the statutory procedure under 'the Rules'. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur yet not willing to correct himself, initially vide order bearing Memo No. 152 dated 31.1.2017 converted the proceedings so initiated against the petitioner into a proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 even before the petitioner could attain superannuation and in quick succession thereafter, issued a second order bearing Memo No. 153 dated 31.1.2017 dismissing the petitioner, again by committing the same blunder of not following the process of law as commanded by the appellate authority. These two orders have been placed on record vide Annexures 23 and 24 to the interlocutory application. While passing the dismissal order, the Regional Deputy



Director of Education has chosen to delete the portion of the order contained in Memo No. 152 dated 31.1.2017 whereby the proceeding has been converted into a proceeding under Rule 43(b) of the Bihar Pension Rules.

I would have allowed the writ petition on the very first day itself considering the apparent illegality in the orders of the disciplinary authority but allowing the Regional Deputy Director of Education as well as the Director to respond to the issue raised that this matter was adjourned and has been taken up today when a counter affidavit is filed by the Regional Deputy Director of Education as well as the Director, Secondary Education. A perusal of the counter affidavit filed on behalf of the Regional Deputy Director of Education would confirm that his knowledge about the procedure mandated in the Rules, is rather circumscribed and he is not willing to update himself on the knowledge. In my opinion, such officers should not be given the duty of holding any disciplinary proceeding. The Head of the departments need to ponder over the issue.

It is surprising that even when the earlier order of this Officer was quashed by the Director, Secondary Education for violation of the mandatory procedure, yet the Regional Deputy Director of Education has not bothered to go through the procedure explained in 'the Rules' in order to realize the blunder committed



rather, the affidavit filed today confirms the deficient knowledge he possesses about the statutory procedure.

I would now turn to the affidavit of the Director, Secondary Education as the appellate authority who candidly accepts that the two orders impugned herein by way of interlocutory application bearing I.A.No. 1306/2017 both dated 31.1.2017, are without sanction of law and have been passed with non-application of mind. The Director has admitted at paragraphs 5 and 6 of the counter affidavit that the termination order bearing Memo No. 153 dated 31.1.2017 dismissing the petitioner from service is without following the prescribed norms. Considering the repeated default committed by the Regional Deputy Director of Education who fails to correct himself despite the advice given by the appellate authority to follow due process of law/procedure as provided in 'the Rules', it would be open for the Director, Secondary Education to take a decision whether or not the Regional Deputy Director of Education concerned is capable to discharge the duty of a disciplinary authority in future.

In view of the undisputed position discussed, that the orders of dismissal have been passed without following due process of law as admitted by the Director, Secondary Education, it is only a completion of formality by this Court to quash the orders bearing Memo No. 153 dated 31.1.2017 together with the order bearing Memo



No. 152 dated 31.1.2017, impugned at Annexures 24 and 23 respectively, which are accordingly quashed and set aside. The petitioner stands deemed reinstated from the date of dismissal.

As the petitioner has superannuated, he shall be entitled to all consequential benefits.

The writ petition is allowed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.07.2018
Transmission Date	NA

