

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3899 of 2014

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Rabindra Nath Chaubey S/O Late Kamla Kant Chaubey Resident Of At And
Po- Gosaipur Via- Chousa, Ps- Rajpur, Distt- Buxar, Presently Posted Block
Education Officer, Block- Rohtas, Distt- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna.
2. The Principal Secretary, Education Department, Government Of Bihar, Patna.
3. Director, Primary Education, Government Of Bihar, Patna.
4. Special Secretary- Cum- Director, Primary Education, Government Of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate
	:	Mr. Anup Kumar Chongdar, Advocate
	:	Mr. Ganesh Singh, Advocate
For the Respondent/s	:	Mr. Santosh Chandra Bhaskar, AC to GP-11

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 27-03-2018

This writ petition under Article 226 of the Constitution of India has been filed to quash the order dated 21.03.2014 issued by respondent No. 3 by which the petitioner has been dismissed from the service.

2. Briefly stated the case of petitioner is that he was appointed in Subordinate Education Service and posted as Lecturer on 27.04.1991 at PTEC, Gumla and after being transferred at various places he was posted as BEEO at Jagdishpur, West in the district of Bhojpur in 2006 and on 12.09.2006 a trap case was registered against him being Vigilance P.S. Case No. 51 of 2006 in which he was arrested



and sent to jail, as a result of which he was suspended on 26.09.2006.

3. Petitioner was released on bail and gave his joining on 01.12.2006 in D.S.E. Office, Bhojpur and his headquarter was fixed at RDD office, Patna and departmental proceeding was initiated vide letter No. 1248 dated 28.11.2006 and a memo of charge was framed in Prapatra 'Ka' in three heads and served upon petitioner.

4. Petitioner appeared before the Conducting Officer and filed his written defence and enquiry proceeding was concluded and charges against petitioner were found not to be proved by the Enquiry Officer, as such by order dated 30.11.2007 the order of suspension against petitioner was revoked.

5. It has been further stated by way of supplementary affidavit that after filing of writ petition on 17.02.2014 a show cause notice under Rule 18(2) and (3) of Bihar CCS (CCA) Rule 2005 on 21.02.2014 have been issued by respondent No. 3 by his letter No. 861 dated 14.02.2014 along with enquiry report of Enquiry Officer dated 13.07.2007

6. Petitioner filed his written show cause. It has been further submitted by the counsel for the



petitioner that departmental proceeding against petitioner was dropped by order dated 30.11.2007 as petitioner was exonerated by Enquiry Officer and as such the Director, Primary Education has no authority to re-open the closed departmental proceeding and suspend the petitioner for the same charge. During pendency of writ petition the Director, Primary Education-cum-Disciplinary Authority has passed the final order of punishment of dismissal from Service against the petitioner vide memo No. 433 dated 21.03.2014.

7. Petitioner was exonerated by the Enquiry Officer and thereafter a decision was taken at the government level to drop the departmental proceeding against the petitioner but after seven years of said decision the Disciplinary Authority issued a show cause in 2014 in which he has not given any finding that the charges against the petitioner stands proved or any tentative reasons differing with the finding of Enquiry Officer and without any consideration and materials available on the record has passed the order of dismissal of petitioner.

8. A counter affidavit has been filed on behalf of the respondents in which it has been submitted that petitioner while being posted as Block Education Extension Officer, Jagdishpur, Bhojpur was arrested in a trap case for accepting bribe by Vigilance Investigation Bureau on 12.09.2006. Accordingly



Vigilance P.S. Case No. 51 of 2006 dated 12.09.2006 was instituted against petitioner and he was arrested.

9. Vide Memo No. 942 dated 26.09.2006 petitioner was put under suspension with effect from 12.09.2006 in terms of Rule 99 of Bihar Service Code and required sanctioned for prosecution was granted on 08.11.2006.

10. Departmental proceeding was also initiated against the petitioner vide Memo dated 28.11.2006 and Memo of charge was served upon petitioner containing three charges. After conclusion of inquiry proceeding, Enquiry Officer submitted enquiry report dated 13.07.2007 and, thereafter, by order dated 30.11.2007, suspension was vacated in terms of Sub-Rule 3(1) of Rule 9 of CCA Rules, 2005. Petitioner was again suspended vide memo dated 12.02.2014 in terms of rule 9(1)(a) and (C) of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 and Rule 3(1) of Bihar Government Servants Conduct Rules, 1976. The disciplinary authority did not agree with the finding of Enquiry Officer and gave notice to petitioner differing with the enquiry report by letter dated 14.02.2014 in terms of Rule 18(2) and (3) of CCA Rules, 2005.

11. The petitioner submitted his reply to the 2nd show cause and after consideration of his reply and materials



available on record the disciplinary authority passed an order of dismissal vide Memo No. 433 dated 21.03.2014.

12. There is no dispute with proposition of law that criminal proceeding and departmental proceeding can continue simultaneously even charges in both proceedings are identical and oral and documentary evidences on basis of which charges are required to be established in criminal proceeding as well as departmental proceeding are common as the standard of proof as required in criminal proceeding and departmental proceeding are different. In criminal proceedings charges are to be proved beyond reasonable doubt whereas in departmental proceeding it is preponderance of probabilities. An accused can be exonerated in criminal proceeding but for similar charges he can be held guilty in departmental proceeding.

13. The order of dismissal dated 21.03.2014 has been passed by the disciplinary authority in flagrant violation of natural justice as well as provisions under the CCA Rules 2005 and same cannot be sustained and is accordingly quashed. Petitioner is directed to be reinstated in the service forthwith along with continuity of service and back wages. As Vigilance Case is still pending against the petitioner, the authorities can take further action against the petitioner on the outcome of



Vigilance Case. As the decision was taken at the Government level to accept the findings of Enquiry Officer and drop the Departmental Proceeding against petitioner, same cannot be reopened by the Director, Primary Education, Government of Bihar, Patna.

14. The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

