

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6173 of 2017

Ashok Kumar Giri, S/o Late Gopal Sharan Giri, R/o Village- Bhadaï, P.S.-
Giriyak, District- Nalanda, Presently posted as Principal, Rajkiya Buniyadi
Vidyalay, Bimawa Arrah (Bhojpur). Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Deptt. of Education, Bihar, Patna.
3. The Director, Primary Education, Department of Education, Bihar, Patna.
4. The Director (Administration), Cum Additional Secretary Department of Education, Bihar, Patna.
5. The Joint Secretary Department of Education, Bihar, Patna.
6. The Secretary, Revenue Board, Bihar, Patna.
7. The Deputy Secretary, Revenue Board, Bihar, Patna.
8. The Under Secretary, Revenue Board, Bihar, Patna. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Choudhary, Advocate
		Mr. Vijay Bharti, Advocate
For the Respondent/s	:	Mr. Prabhu Sharma, AC to AG
For BPSC	:	Mr. Jaki Haider, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 03-05-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State as well as BPSC.

Petitioner is aggrieved by the order contained in
Annexure-15 whereby punishment of cancellation of promotion
was inflicted on the petitioner.

Mr. Ashok Choudhary, learned counsel appearing
on behalf of the petitioner submits that we are governed by Rule
of Law and the authority has to pass order inflicting punishment
in accordance with law and the rule regulating the departmental
proceeding. Mr. Choudhary submits that under the Bihar
Government Servant(Classification Control and Appeal) Rule,
2005 the punishment are prescribed under Rule 14 which
contains specific minor and major punishment. The authority is



required to inflict only those punishments prescribed under the rule.

Referring to Rule 14 he submits that the punishment inflicted on the appellant is not prescribed under the rule and as such the respondents are not justified in imposing the punishment which is not prescribed under the rule and such unsustainable.

He further submitted that the impugned order is unsustainable for other reasons as well. The order contained in Annexure-15 is not non-speaking. It does not indicate the application of mind to the explanation furnished by the petitioner to the authorities. He next contended that in the totality of facts situation no prudent man can approve the action of the respondents inflicting punishment contained in Annexure-15.

On behalf of the BPSC a counter affidavit has been filed. The State has not chosen to file any counter affidavit.

From perusal of Annexure-15 it appears that at the relevant time BPSC expressed that consultation with the BPSC is uncalled for and not warranted.

Learned counsel appearing on behalf of the State tried to justify the order inflicting punishment contained in



Annexure-15. However, he has not been able to dispute the fact that rule does not provide punishment in the nature of cancellation of promotion. He has not been able to dispute the legal proposition that in system governed rule of law nobody has discretion to decide the imposition of punishment according to his own wishes.

In view of the aforesaid legal factual position the court has no hesitation in holding the order contained in Annexure-15 is contrary to the rule regulating imposition of punishment and as such the order contained in Annexure-15 cannot sustain.

In addition thereto, the court finds substances in the contention of the learned counsel for the petitioner that the cogent reasons are lacking in the order inflicting punishment.

The Constitution Bench of the Apex Court has occasion to examine the defect of non-speaking order in the decision making process in the case of **S.N. Mukherjee Vs. Union of India AIR 1990 SC 1984**, the Apex Court clearly held out with reference to various judgments that the reasoned order is third principle of natural justice. The court is of the considered view that the order contained in Annexure-15 also violates the principle of natural justice as it is non speaking and



as such it cannot sustain.

For the reason aforesaid, the court is of the view that the writ petition deserve to be allowed. The order contained in Annexure-15 has to be quashed and it is accordingly quashed. The petitioner would be entitled to all consequential benefit on quashing of the order contained in Annexure-15.

Mr. Choudhary submitted that at the relevant time when the petitioner was under suspension in contemplation of departmental proceeding he remained under suspension for more than two years and nothing was paid except subsistence allowances. In a situation with the order of punishment passed by the authority is quashed by this court, the court is of the view that respondents have to pass fresh order with regard to period of suspension by taking decision afresh as how to treat the period of suspension. Necessary decision with regard to period of suspension shall be taken by the respondents within a maximum period of sixty days from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition is allowed to the extent indicated above.

(Anil Kumar Upadhyay, J)

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