

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9683 of 2014

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Mostt. Malti Sharma, W/o Late Akshay Kumar Sharma, R/o Village- Ayama, P.S- Saraiyan, District- Muzaffarpur, Retired from the post of Assistant Teacher from upgraded Middle School Ayama, Block- Saraiyan, Distt- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Government of Bihar, Patna.
2. The Secretary, Secondary Primary & Adult Education Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Division, Muzaffarpur.
4. The Block Development Officer, Saraiyan, District- Muzaffarpur.
5. The District Education Officer, Muzaffarpur.
6. The Area Education Officer, Saraiyan, Muzaffarpur.
7. The Zila Karyakram Sammanayavak Padadhikari, Bihar Siksha Pariyojana, Muzaffarpur.
8. The Principal, Government upgraded Middle School, Ayama, Block- Saraiyan, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Verma, Advocate
For the Respondent/s : Mr. Rajiv Roy, GP-1
Mr. Suresh Kumar, AC to GP-1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 01-11-2018

Heard learned counsel for the petitioner and State.

2. The petitioner is aggrieved by the order dated 10.08.2005 passed by the District Superintendent of Education, Muzaffarpur, whereby punishment of stoppage of two annual increments with cumulative effect has been imposed on the petitioner and the appellate order dated 18.03.2013 whereby the appeal filed by the petitioner has been dismissed.

3. Learned counsel appearing on behalf of the



petitioner submits that imposition of major punishment was passed without following the procedure prescribed under Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

4. From the materials available on record as well as from the counter affidavit, there is no denial of fact that the order inflicting punishment was passed without following the procedure required under the Rules, 2005. The order of inflicting punishment was approved by the Commissioner of the Division in Service Appeal No. 141 of 2008.

5. From the order, as contained in Annexure-6, it appears that the Appellate Authority in Service Appeal has consumed more than two years while taking decision. From the order-sheet, it also appears that even record called for was not produced on different dates, yet the Presiding Officer leisurely granted adjournment in favour of the department. On dates, when the petitioner was available, the case was adjourned on one or the other pretext by the Appellate Authority, but on one date i.e. 18.03.2013 on account of absence of the petitioner, the appeal was dismissed, as not maintainable.

6. The Court fails to understand the application of mind by the Commissioner (Appellate Authority). Considering the totality of the facts situation including violation of principles of natural justice and total non-application of mind, the orders passed by



the disciplinary authority and the order of the Commissioner are hereby held to be without application of mind and without compliance of principles of natural justice and as such the orders cannot sustain. Accordingly, both the orders contained in Annexures- 4 and 6 are hereby quashed.

7. The respondents are directed to restore all the benefits of quashing of the order contained in Annexures-4 and 6 as if it never existed. Necessary consequential benefits must reach the petitioner within a maximum period of four months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.11.2018
Transmission Date	

