

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15881 of 2014

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Ram Janam Ram, S/o Late Jaleshwar Ram, R/o village- Mathurapur, P.S.
Nabinagar, District - Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna
4. The District Education Officer, Aurangabad
5. The District Programme Officer (Estt.), Aurangabad
6. The Block Education Officer, Nabinagar, District- Aurangabad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Rajeev Kumar Singh, Advocate
For the Respondent/s : Mr. Manish Dhari Singh, AC to AG

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 14-09-2018

Heard learned counsel for the petitioner and State.

2. Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner submits that the entire departmental proceeding is vitiated and the order of punishment is bad on account of conduct of departmental proceeding in the manner unknown to the conduct of departmental proceeding and contrary to the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005.

3. The petitioner was inflicted punishment of stoppage of one increment and other punishment vide Annexure-1 to



the writ application. The relevant part of Annexure-1 is quoted herein below:

1. श्री राम को निलंबन अवधि का वेतनादि देय नहीं होगा। केवल जीवन निर्वाह भत्ता देय होगा।

2. दिनांक 24-07-2012 एवं 27-07-2012 तक बिना सूचना अनुपस्थित रहने कारण इस अवधि का वेतन देय नहीं होगा।

3. एक वेतनवृद्धि संचयात्मक प्रभाव से स्थगित की जाती है।

4. Under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 stoppage of one increment with cumulative effect is a major punishment and for inflicting major punishment full dressed enquiry is must. Unfortunately, the entire departmental proceeding was conducted in most arbitrary manner only to complete formality.

5. From perusal of the allegation, it appears that on vague charges, the petitioner was put under suspension and proceeded against in the departmental proceeding. For ready reference, the charges leveled against the petitioner is quoted herein below:

आरोप

1. जनता दरबार में उदण्डता एवं अनुशासनहीनता का व्यवहार किया जाना।

2. दिनांक 24-07-2012 से 27-07-2012 तक बिना सूचना अनुपस्थित रहना।

3. विद्यालय नियमानुसार संचालित नहीं करना।

उक्त आरोप के संबंध में प्रधानाध्यापक अपना स्पष्टीकरण जाँच पदाधिकारी को 15 दिनों के



अन्दर उपलब्ध करायेगे तथा जाँच पदाधिकारी, जिला कार्यक्रम पदाधिकारी, प्रशिक्षण, मा0 शि0, आर0 एम0 एस0 ए0 एवं साक्षरता, औरंगाबाद एवं विभागीय पदाधिकारी प्रखंड शिक्षा पदाधिकारी नवीनगर को प्राधिकृत किया जाता है। जाँच पदाधिकारी इनके आरोप पर एवं प्राप्त स्पष्टीकरण पर जाँच कर जाँच प्रतिवेदन दो माह के अन्दर उपलब्ध कराना सुनिश्चित करेंगे ।

6. The charge nos. 1 and 3 on the face of it appears to be most vague and lack specifics. In the matter of departmental proceeding, the employer is obliged to frame charges, which is not only intelligible, but must constitute misconduct.

7. The issue as to vague charges and its effect was considered by the Apex Court in the case of **A. L. Kalara vs. The Project & Equipment Corporation of India Ltd.**, reported in (1984) 3 SCC 316 where the Apex Court held out that if the charges are vague, it vitiates the entire departmental proceeding. In the case of **Union of India v. J. Ahmed** reported in (1979) 2 SCC 286, the Apex Court examined the issue of misconduct and the Apex Court held out that general expectation and failure to confirm to general expectation does not constitute misconduct. Misconduct must be relatable to the service condition. Considering the case of **A. L. Kalara** and **Union of India Vs. J. Ahmed** (supra), the Court is of the considered view that the charges framed against the petitioner, particularly, charge nos.1



and 3 are vague and not capable of understanding as it lacks specific as to how the petitioner has committed misconduct and what action of the petitioner constituted “उदण्डता एवं अनुशासनहीनता”. Charge No.3: विद्यालय नियमानुसार संचालित नहीं करना also lacks specific how the petitioner has failed to discharge his responsibility is not specific.

8. The issue as to absence is again unsubstantiated, in view of the explanation furnished by the petitioner and the comment of the enquiry officer. The disciplinary authority while passing the order of punishment has not considered the aforesaid lapse in conduct of inquiry.

9. Mr. Singh, learned senior counsel submits that in the departmental proceeding, no witness was examined and no material was exhibited and only upon ipse dixit the enquiry officer submitted a finding against the petitioner.

10. In the case of **Kumaon Mandal Vikas Nigam Ltd. Vs. Girija Shankar Pant**, reported in (2001) 1 SCC 182, the Apex Court has discussed about the necessary components of departmental proceeding.

11. The Court on consideration of this case at the touch stone is of the judgment of **Kumaon Mandal Vikas Nigam Ltd.** (supra) is of the view that the entire departmental proceeding was conducted as an empty formality. In view of the above, the order



inflicting punishment (Annexure-1) cannot sustain. It is, accordingly, quashed. The respondents are directed to restore all benefit on account of quashing of Annexure-1 within a period of four months from the date of receipt/production of a copy of this order.

12. The Court is constrained to note that in the present case, despite service of two advance copies to the office of the learned Advocate General, no counter has been filed on behalf of the State even after expiry of four years. Under the aforesaid compelling circumstance, the Court has passed order on the basis of materials available on record.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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