

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1561 of 2015

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Kamleshwari Pasi, son of Late Fakira Pasi, resident of village + P.O.- Sahora, P.S.
-Chandradeep, District-Jamui, Headmaster, Government Basic School, Saur
Dariapur, District-Nawadah.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education,
Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur.
4. The District Education Officer, Banka, District- Banka.
5. The District Education Officer, Nawadah, District- Nawadah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
Mr. Chandra Shekhar Singh, Advocate
For the State : Mr. Upendra Pratap Singh, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 25-09-2018

Heard learned counsel for the petitioner and State.

2. The petitioner has moved the Court for the
following reliefs :-

*“ i) A writ in the nature of certiorari setting
aside the impugned office order bearing File
No.8/416 dated 14.03.2014 (Annexure-8) issued
under the signature of Respondent Director,
Primary Education, Bihar, Patna whereby
petitioner has been dismissed from service in
contemplation of departmental proceeding
initiated against the petitioner.*

ii) For setting aside the order containing



bearing Memo No. 1233 dated 28.10.2014 (Annexure-9) issued under the signature of Respondent Principal Secretary, Department of Education, Bihar, Patna whereby and whereunder the appeal preferred by petitioner has been dismissed without considering the grounds taken by the petitioner as also in mechanical manner.

iii) To reinstate the petitioner in service with all consequential monetary benefits.”

3. The petitioner, while working as Block Education Officer, Barhat in the district of Banka, on 24.03.2007 was apprehended in a trap case and Vigilance Case No. 42 of 2007 instituted against him. On 25.05.2007, he was placed under suspension and on 19.06.2007, departmental proceeding was initiated and memo of charge served. On 15.01.2009, enquiry report was submitted. On 15.10.2009, the suspension of the petitioner was revoked. However, on 27.01.2012, another Vigilance Case No. 10 of 2012 was instituted for disproportionate assets. On 05.12.2012, the enquiry report was submitted and on 10.02.2014, second show cause was asked from the petitioner. On 22.02.2014, the petitioner submitted his explanation and by order dated 14.03.2014, the Disciplinary Authority passed the order of dismissal. The appeal filed by the petitioner on 28.04.2014 was also dismissed on 28.10.2014.

4. Learned counsel for the petitioner submitted that in



the enquiry report with regard to Charge No. 1, he was found not guilty whereas with regard to Charge No. 2, the Enquiry Officer did not give any opinion as it related to a criminal case. Learned counsel submitted that while sending a copy of the enquiry report to the petitioner, the Disciplinary Authority did not record its reasons for differing with the findings in the enquiry report, which vitiates the final order passed dismissing the petitioner from service. For such proposition, he relied upon the decision of a Co-ordinate Bench of this Court in the case of **Ram Chandra Mandal vs. State of Bihar** reported as **2017(3) PLJR 458**, the relevant being at paragraphs no. 8, 9 and 10. He also relied upon the decision in the case of **Shankar Dayal vs. State of Bihar** reported as **2018(2) PLJR 308**, the relevant being at paragraph no. 13.

5. Learned counsel further submitted that even the requirement of Rule 18(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules') requires the Disciplinary Authority, after receiving the enquiry report, if it disagrees with the findings of the Enquiry Authority on any article of charge, has to record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

6. Learned counsel for the State submitted that the



action of the authorities cannot be faulted in law. It was submitted that the stand of the petitioner that in the second show cause issued to him, reasons for differing with the enquiry report has not been enumerated is erroneous, inasmuch as, the Enquiry Officer had recorded a finding of not proved with regard to Charge No. 1, but with regard to Charge No. 2, it has been stated that no opinion was being given as the matter related to a criminal case. Learned counsel submitted that thus, the Disciplinary Authority forwarding the enquiry report and also stating with regard to the two charges clearly indicated that the petitioner had to give reasons on both the charges, which was then to be considered by the Disciplinary Authority. It was contended that the order of dismissal dated 14.03.2014 clearly indicates that the primary ground on which the petitioner has been dismissed from service related to Charge No. 2, which is of being caught in a trap case by the Vigilance Department and on which the Enquiry Authority had not given any opinion and thus, the issue was left open and rightly the Disciplinary Authority had indicated this in the show cause. It was further submitted that ample opportunity was given to the petitioner to satisfy the authorities with regard to his innocence and, thereafter, a well considered decision has been taken on the merits of the case.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



does not find any merit in the present writ application. Against the petitioner, initially there was a complaint of asking Rs. 5,000/- bribe from the complainant and, thereafter, he was caught accepting bribe of Rs. 5,000/- red handed in a trap case by the Vigilance authorities. Thus, on these two counts, two charges were framed against him respectively. Without advertting to the Charge No. 1 relating to the demand of bribe, the Court is only referring to Charge No. 2, which is of being caught red handed accepting bribe in a trap case by the Vigilance authorities. On this charge, the Enquiry Authority had not given any opinion only on the ground that there was a criminal case for such charge also. However, law is settled that the Disciplinary Authority has not to wait for conclusion of the criminal case while proceeding to conclude the departmental proceeding. In the present case, the explanation given by the petitioner is that on the fateful day at 4.30 P.M., when he returned to his house, suddenly five persons entered his house behind him and took him into custody, which initially he thought was an attempt to kidnap him. It was further in his explanation that upon entering the house, two persons had caught his wrist and one person had taken out a bundle of notes from his suit pocket and had put it in the pocket of the petitioner from where it was taken out and shown to him that Rs. 5,000/- of bribe money was recovered from him and, thereafter, he was forcefully made to sit in a



car and taken to Bhagalpur and on the way, he was abused and his signature was also taken on a blank paper. The Court finds such explanation to be absolutely unnatural from all angles. Thus, if the Disciplinary Authority has also not accepted such explanation, the Court finds the same to be a plausible and reasonable view taken, which, in the considered opinion of the Court cannot be said to suffer from any legal infirmity. Moreover, law being settled that in matters relating to departmental proceeding, only the procedural aspect has to be seen and in the present case, no procedural infirmity to vitiate the final order having been brought to the notice of the Court, the order passed by the authorities does not require any interference. As far as the decisions relied upon by learned counsel for the petitioner are concerned, the same relate to a case where second show cause notice did not record reasons for differing in the background that the enquiry report had exonerated the government servant, whereas in the present case, there was no occasion for recording any reasons for differing as actually there was no difference of opinion since the Enquiry Authority had itself recorded that it was not giving any opinion with regard to Charge No. 2 on which primarily the Disciplinary Authority has relied and which this Court, having considered the explanation offered by the petitioner, finds to be a reasonable and plausible view taken by the Disciplinary Authority.



8. For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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