

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 1331 of 2015

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Gopal Prasad Singh Son of Late Mahendra Singh, Resident of Village- Champapur,
P.S.- Bakhtiyarpur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Director (Administration)-Cum- Additional Secretary, Department of Education, Government of Bihar, Patna.
5. The Regional Deputy Director, Education, Magadh Division, Gaya.
6. The Regional Deputy Director, Education, Patna Division, Patna.
7. The District Programme Officer, (Establishment), Gaya.
8. The District Education officer, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Rajeev Kumar Singh and Mr. Pramod Prasad, Advocates
For the State	:	Mr. Prabhakar Jha, G.P. 27 Mr. Shankar Kumar Thakur, A.C. to G.P. 27

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-08-2018

Heard Mr. Rajendra Prasad Singh, learned senior counsel
along with Mr. Rajeev Kumar Singh, learned counsel for the
petitioner and Mr. Prabhakar Jha, learned GP-27 along with Mr.
Shankar Kumar Thakur, for the State.

2. The petitioner has moved the court for the following
reliefs:

“ That the petitioner by way of the instant writ application prays for the issuance of writ in the nature of certiorari seeking therein quashment of the order contained in memo no. 509 dated 04.04.2014 issued by the Principal Secretary, Deptt. Of



Education, Govt. of Bihar, Patna dismissing the petitioner from the service under the state Government in the Department of Education as a member of the Subordinate Education Service as also for further direction upon the Respondent State Authorities to re-instate the petitioner forthwith on the post he was working at the relevant time or equivalent post with all consequential benefits.”

3. The petitioner was posted as Block Education Officer, Manpur in the district of Gaya, when on 27.12.2011, a team of the Vigilance Investigation Bureau allegedly caught him red handed accepting bribe of Rs. 8000/- from one Manoj Choudhary, a Tola Swayam Sewak. He was placed under suspension and departmental proceeding initiated. In the enquiry he was exonerated of the charges but the Disciplinary Authority issued second show cause. Pursuant thereto, the impugned order of dismissal has been passed dated 04.04.2014, copy of which is Annexure-14 to the writ application.

4. Learned counsel for the petitioner submitted that the entire allegation is frivolous, concocted and rather it was a frame-up for the reason that on 20.12.2010 itself, the petitioner had written to the District Superintendent of Education, Gaya that the appointment of Manoj Choudhary was wrong and that payment of honorarium would not be proper. It was submitted that once the petitioner had stopped payment and asked for guidelines, there was no occasion for him to accept a bribe of Rs. 8,000/- as he could not have acted any



further in the matter without the superior authority issuing guidelines. Learned counsel further submitted that the procedure adopted by the Disciplinary Authority is totally in the teeth of the statutory provisions particularly Rule 18(2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the 'Rules'). It was submitted that the so called second show cause dated 14.02.2014, does not even whisper with regard to any reason assigned by the Disciplinary Authority for differing with the enquiry report and rather it perfunctorily mentions that because the petitioner has been caught red handed accepting bribe, the charges are proved. Learned counsel submitted that the law does not permit such arbitrary action on the part of the Disciplinary Authority and the Court is well within its jurisdiction to interfere in the same as the very procedure adopted in the departmental proceeding before passing of the final order stands completely vitiated.

5. Learned counsel for the State submitted that the Disciplinary Authority has mentioned the specific provisions of Rules 18(2) and 18(3) of the Rules and the petitioner having got an opportunity by way of second show cause for defending himself, the mandate of law stands satisfied.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the court is



not going into the finer aspects of the matter as the writ petition is fit to be disposed off purely on the short legal point with regard to the procedure prescribed by law to be adopted by the Disciplinary Authority.

7. In the background of the undisputed factual position, the Court would dwell on the so called second show cause notice issued to the petitioner dated 14.02.2014. Bare perusal of the same discloses that there is absolutely no difference whatsoever recorded with regard to the opinion of the enquiry officer and more importantly, no reasons whatsoever have been assigned for any such difference. Rule 18(2) of the Rules reads as under:

“ 18(2). The disciplinary authority, after receipt of the enquiry report as per rule 17 (23) (ii) or as per sub-rule(1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.”

8. From the aforesaid, it is obvious that the law mandatorily requires that the Disciplinary Authority, after receipt of the enquiry report, if it disagrees with the finding of the inquiring authority on any article of charge, has to record its reasons for such disagreement and also record its own finding on such charge, if the evidences on record is sufficient for the purpose. The Court would



pause here. Clearly, there is neither any opinion recorded nor any reasons given for differing from the report of the enquiry officer. Thus, clearly there has been grave infraction of the procedure envisaged under law while conducting disciplinary proceeding. The matter becomes worse for it has resulted in the most severe punishment being awarded to the petitioner i.e., dismissal.

9. The law being settled that under judicial review in such matters, the Courts would go into the legality of the procedure and would test whether there has been any non compliance of the statutory requirements; in the present case, the Court finds that the Disciplinary Authority has completely given a go by to the statutory provisions, especially Rule 18(2) of the Rules.

10. In view thereof, the impugned order of dismissal dated 14.04.2014 cannot be sustained and is accordingly, set aside. The petitioner stands reinstated in service. However, as the allegation is of being caught red handed accepting bribe, the Court, taking a larger view in the matter, deems it appropriate to remit the matter back to the authorities for consideration from the stage of issuance of second show cause notice. Thus, the Disciplinary Authority shall be at liberty to take a decision on the enquiry report and act in furtherance thereto in accordance with law, either by passing order accepting the enquiry report or issuing a second show cause notice to the petitioner in terms



of Rules 18(2) and 18(3) of the Rules. The same be done within two months from today. Thereafter, the proceedings shall be taken to their logical conclusion within three months. As the matter has been remanded to the stage of submission of the enquiry before the Disciplinary Authority, the position, as was existing at the relevant time stands restored with all consequential benefits.

11. The writ petition stands allowed in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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