

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 624 of 2019

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Gopal Prasad, Son of Late Pashupati Nath Verma, Resident of Village- Khoajpur, P.S. Baligaon, District- Vaishali at present residing at Krishna Nagar, Town and PS and District- Nawada.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Director Administration cum Addl. Secretary, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Magadh Division, Gaya.
5. The District Education Officer, Nawada.
6. The District Education Officer, Gaya.
7. The District Education Officer, Aurangabad.
8. The District Programme Officer (Establishment), Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Bajarangi Lal, Advocate
For the Respondent/s : Mr Mukund Mohan Jha, AC to GP XXVII

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 26-09-2019

Heard learned counsel for the petitioner as well as the learned State Counsel.

2 Petitioner was posted as Head Clerk in the office of the District Education Officer (for brevity, DEO), Nawada. The charges were communicated to him under Letter dated 08.09.2015 issued by the Regional Deputy Director of Education (for brevity, RDDE). The petitioner submitted his point wise response to the



Charge Memo and an enquiry was conducted in the matter. Pursuant to the Enquiry Report dated 26.12.2016 submitted by the DEO, Gaya -cum- Enquiry Officer, the RDDE had issued one Office Order dated 29.04.2017 whereby petitioner has been visited with punishment, as under:

- (1) Withholding of one increment without cumulative effect.*
- (2) Petitioner would not be allowed to deal with important files.*
- (3) Censure.*
- (4) Warning for future.*

3 Order of the punishment has been assailed by the petitioner before the Appellate Authority. The Director, Secondary Education, Bihar has rejected the appeal of the petitioner by order dated 19.09.2018.

4 The order of punishment dated 29.04.2017 as well as the order of the Appellate Authority dated 19.09.2018 are assailed in the instant proceedings.

5 Learned counsel for the petitioner submits that the Charge Memo (Prapatra Ka) was not served on the petitioner. He further submits that without serving a second show cause notice, after submission of the Enquiry Report dated 26.12.2016, the order of punishment has been passed without even recording the charges, let alone by recording findings in respect thereof.



6 Learned counsel for the State, on the other hand, submits that the Charge Memo discloses several instances of insubordination and dereliction of duty which are motivated for personal gains and, therefore, the minor punishment, which has been imposed on the petitioner in the background of his conduct, requires no interference by this Court in the instant proceedings.

7 Submission advanced by the counsels have to be viewed in the background of the provisions contained in the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for brevity, Bihar CCA Rules) under which the proceedings were conducted. The petitioner has submitted his point wise response to the charges before the Enquiry Officer. This is evident from recording of this fact in the order passed by the Appellate Authority. The petitioner has also not made any objection regarding Prapatra Ka not being enclosed with Communication dated 08.09.2015 before any Authority. Without such objection, he has submitted his point wise reply. Therefore, this Court does not find submission of the petitioner's counsel, that Charge Memo was not served, to be correct. The objection regarding non-service of the Enquiry Report and non-issuance of second show cause notice are meaningless in view of the provisions contained in Rule



19 (1) (a) (b) and (c) of the Bihar CCA Rules which read as follows:

19. Procedure for imposing minor penalties.-(1)
Subject to the provisions of sub-rule (3) of Rule 18, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (v) of Rule 14 shall be made except after-

(a) informing the Government Servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour on which it is proposed to be taken, and giving him reasonable opportunity of making such representation as he may wish to make against the proposal;

(b) holding an inquiry in the manner laid down in sub-rules (3) to (23) of Rule 17, in every case in which the disciplinary authority is of the opinion that such inquiry is necessary;

(c) taking the representation, if any, submitted by the Government Servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration;

8 The procedure prescribed in the Bihar CCA Rules has been followed by the respondent-Authorities. The petitioner was informed in writing about the charges. He has given his response. Enquiry has also been conducted. Therefore, till the stage of Rule 19 (1) (c) of the Bihar CCA Rules, this Court finds that there is no infirmity in the procedure adopted by the Authorities.

9 Order of punishment, however, does not record even the charges in respect of which the enquiry was conducted. There is no finding recorded in the order of punishment in respect of any



allegation whatsoever. The order of punishment, therefore, is in derogation of the provisions contained in Rule 19 (1) (b) of the Bihar CCA Rules. The Charge Memo discloses many imputations. The petitioner is alleged to have occasioned non-submission of Fund Utilization Report for the Financial Years, 2011 – 2012 – 2013 and 2013 – 2014. It is alleged that he did not sign the bills for payment of the provident fund amount in respect of a retired employee (Jeep Driver). Other similar allegations have been made in the Charge Memo. Altogether, there are four charges. It also includes frustrating action against some erring Teachers and complaints in respect thereof before the Lokayukta, Bihar.

10 The order of the Disciplinary Authority awarding the minor punishment, however, refers to no charge and records no finding whatsoever. There is a manifest violation of the procedure required under Rule 19 (d) of the Bihar CCA Rules. Non-assigning of reasons and non-recording of evidence in respect of misconduct or misbehaviour cannot be countenanced. The same is not only in violation of the Bihar CCA Rules, 2005; but requirement of reasoned orders is also essential in view of the repeated pronouncements of various Courts. In this connection, this Court would refer to the decision of the Apex Court in the case of Kranti Associates Private Limited & Another -Versus- Masood



Ahmad Khan & Others reported in (2010) 9 Supreme Court Cases 496.

11 The order of the Disciplinary Authority dated 29.04.2017 is, thus, not sustainable in the eyes of law and is hereby quashed. The order of the Appellate Authority, which merely reaffirms illegal order issued by the Disciplinary Authority, is also, therefore, unsustainable and must collapse. The same is also quashed. The matter is remitted to the Disciplinary Authority (respondent No 4) to pass a reasoned and speaking order in accordance with law.

12 Writ petition is allowed with the aforesaid observations.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.09.2019
Transmission Date	NA

