

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17376 of 2011

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Shiv Prasad Tiwary S/O Sri Yamuna Tiwary Resident Of Village - Kutumba,
P.O. And P.S. - Kutumba, Dist. - Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Aurangabad, Dist. - Aurangabad.
4. The Sub-Divisional Officer, Aurangabad Dist. - Aurangabad.
5. The Block Development Officer, Navinagr Block, Navinagr, P.O. And P.S. -
Navinagar, Dist. - Aurangabad
6. The Mukhiya, Belai Gram Panchayat, Navinagr Block, Navinagr, P.O. and
P.S. - Navinagar, Dist. - Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Singh Advocate
For the Respondent/s : Mr.Zaki Haider, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 14-10-2019

Heard learned counsel for petitioner and learned State
counsel.

2. The petitioner, who was a *Panchayat Sewak* was
proceeded against on account of certain allegations relating to
appointment of *Panchayat* Teachers, execution of Earth filling
work and other irregularities while he was posted in Belai Gram
Panchayat. The Enquiry proceedings concluded in finding of
two charges regarding irregularities in the process of
counseling during appointment of *Panchayat* Teachers and
some work entrusted to him having been proved. The District



Magistrate, upon submission of enquiry report issued a second show cause notice to the petitioner. The petitioner responded on 19.10.2009. Upon due consideration of the inherent admission of the petitioner, the District Magistrate, Aurangabad found the charges to be grave, proved and dismissed the petitioner from service.

3. The service Appeal no. 78 of 2010 filed by the petitioner before the Divisional Commissioner, Magadh Division, Gaya was rejected on 07.07.2011. The order of District Magistrate dated 29.07.2010 as well as the order passed by the Divisional Commissioner, Magadh Division Gaya on the petitioner's appeal on 07.07.2011 are both assailed in the instant proceedings.

4. The petitioner has taken a stand that his signatures were obtained by the *Mukhiya* of the *Panchayat* forcibly. He further highlights that signatures obtained in the process of counseling for appointment of *Panchayat* Teachers are not relevant inasmuch as the proceedings have been conducted afresh. The submission is that by giving signatures in the earlier process of counseling, no wrong has finally been committed as the issue was detected on time and remedial steps/measures were taken by the authorities.



5. The counsel for the petitioner submits that the findings are unsustainable on account of there being no witness or evidence being produced in the enquiry.

6. The State counsel, on the other hand, referring to the averments made in the counter affidavit, submits that the petitioner, in his defence, has made inherent admission in respect of the charges.

7. It is his submission that after a thorough enquiry, the District Magistrate has found the charges proved. The charges are grave in nature. The petitioner was actually in collusion with the *Mukhiya* and, therefore, this Court should not interfere with the impugned orders.

8. The petitioner's counsel, therefore, in the aforesaid facts and circumstances, submits that the order of punishment is excessive and disproportionate to the allegations and charges proved in the course of enquiry. Since the authorities have relied upon the petitioner's admission they must also consider his explanation in support of such admission relating to putting his signature in the earlier process of counseling for appointment of *Panchayat* Teachers under pressure of the local *Mukhiya* and Headmaster. Whether the same constituted a mitigating factor to award a lesser punishment to the petitioner



is an issue which the petitioner wants to agitate before the authorities for proper consideration to vary or alter the punishment of dismissal and substitute the same by a lesser punishment.

9. Law in this regard is settled. This Court is mindful of the fact that the quantum of punishment is an issue in which Courts have very limited jurisdiction and is best left for the authorities to consider. The matter is therefore, remanded to the Appellate Authority i.e. The Divisional Commissioner, Magadh Division, Gaya (Respondent no.2) to re-consider the issue with regard to quantum of punishment.

10. The petitioner would be at liberty to make a representation enumerating the mitigating circumstances which he proposes to submit for reconsidering the quantum of punishment before the Divisional Commissioner, Magadh Division, Gaya. If such an application is filed within eight (08) weeks, the Divisional Commissioner, Magadh Division, Gaya (Respondent no.2) shall consider the same in accordance with law and dispose off by a reasoned and speaking order within three (03) months thereafter. The earlier order dated 07.07. 2011 passed by the Divisional Commissioner shall not stand in the way of such reconsideration in respect of the punishment.



10. The writ petition stands disposed off.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.10.2019
Transmission Date	

