

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12856 of 2014

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Shambhu Hazra S/o Bishun Deo Hazra, resident of village- Amdipur, P.S.-
Patori, Dist.- Samastipur. At present dismissed Headmaster, Government
Upgraded Middle School, Dharanipatti, Block- Mohapur, Dist.- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director Primary Education, Bihar at Patna, Secretariat at Patna
3. District Magistrate, Samastipur
4. District Education Officer, Samastipur
5. District Programme Officer Establishment-cum-Conducting Officer,
Samastipur
6. Block Education Officer, Patori, Samastipur
7. Block Education Officer, Mohanpur-cum-Upsthapna Padadhikari,
Samastipur
8. Block Education Officer, Mohiuddin Nagar-cum-Enquiry Officer,
Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uma Kant Verma
For the Respondent/s	:	Mrs. Binita Singh, SC-28
		Mr. Apurv Harsh, AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

12 03-07-2019 The present writ petition has been filed for quashing

the order dated 17.05.2014 passed by the District Education

Officer, Samastipur and the District Programme Officer,

Establishment (Samastipur), whereby and whereunder

punishment of dismissal from service has been inflicted upon

the petitioner herein.

The brief facts of the case are that the District



Programme Officer (Establishment), Samastipur issued a Memo dated 04.06.2013, whereby and whereunder the petitioner herein was put under suspension and thereafter a Memo dated 26.07.2013 was issued wherein an Enquiry Officer was appointed and charge sheet was issued to the petitioner herein containing Prapatra-Ka, wherein five charges were levelled, details whereof are given herein below:-

- (i) *First charge is regarding attendance of 182 students being found marked in the attendance register although 42 students were present;*
- (ii) *No payment of stipend to the cook;*
- (iii) *Non-implementation of the Mid Day Meal Scheme from the month of October, 2012 to the month of January, 2013;*
- (iv) *Non-serving of green vegetables in the Mid Day Meal provided to the students; and*
- (v) *The register pertaining to the Mid Day Meal was kept in the house of the petitioner instead of the same being kept in the school.*

It appears that an inquiry was conducted by the Enquiry Officer wherein the petitioner had participated, however, the Enquiry Officer did not find any charges to have been proved and thus submitted his enquiry report dated 06.02.2014 wherein he concluded that there is no clarity in the charges levelled against the petitioner herein. The District



Education Officer, Samastipur by a letter dated 20.04.2014 issued a second show cause notice to the petitioner herein stating therein that vide the Enquiry Report dated 06.02.2014, the petitioner has been found guilty of financial irregularities. Nonetheless, additional charge of accepting bribe of Rs. 2,000/- was added illegally by the District Education Officer, Samastipur which was not a part of Prapatra-Ka. It appears that the petitioner had then replied to the second show cause notice dated 20.04.2014, whereupon the impugned order of punishment dated 17.05.2014 has been passed, which does not refer to either Prapatra-Ka or the charge sheet or the enquiry report dated 06.02.2014 and merely records an alien charge of receiving bribe of Rs. 2,000/- and states that the petitioner was caught red handed by the Vigilance Trap Team.

The learned counsel for the petitioner has submitted that the final order of punishment or exoneration can only be passed pertaining to the charges regarding which the departmental proceeding has been initiated and referring to a new charge which has formed the basis of passing of the order of punishment in the present case, is clearly erroneous on account of non-grant of opportunity to the petitioner to defend himself as well as due to non-compliance of the principle of



natural justice.

The learned counsel for the respondent-State, though has controverted the submissions made by the learned counsel for the petitioner but has not been able to show that the charges on which the petitioner has been dismissed from service, were part of the charge sheet issued to the petitioner herein or for that matter part of the enquiry proceedings.

Having regard to the facts and circumstances of the case and having considered the materials on record, this Court is of the view that the order of punishment dated 17.05.2014 is clearly illegal inasmuch as the charges, which have formed the basis for imposing the major punishment of dismissal on the petitioner herein are nowhere to be found either in the charge sheet or in Prapatra-Ka or in the enquiry report of the Enquiry Officer, hence admittedly, the petitioner has not been granted any opportunity to defend himself or an opportunity of hearing, with regard to the new/alien charge which has formed the basis for inflicting the punishment of dismissal dated 17.05.2014, thus the orders of punishment dated 17.05.2014 is illegal and unsustainable, therefore liable to be quashed.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the writ



petition is allowed and the impugned order of punishment dated 17.05.2014 is quashed. In view of the gross illegality committed by the District Education Officer, Samastipur and the District Programme Officer (Establishment), Samastipur, in passing the impugned order dated 17.05.2014, I deem it fit and appropriate to direct for payment of the entire back wages to the petitioner herein from the date of dismissal till the date of reinstatement. Reference in this regard be had to a judgment of the Hon'ble Apex Court, reported in *(2013) 10 SCC 324* in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak & Ors.*

It is needless to state that the petitioner shall be reinstated in service forthwith.

(Mohit Kumar Shah, J)

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