IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15391 of 2018

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Manish Kumar, Son of Sri Mahesh Prasad Singh Resident of Village- Byapur, P.S. Maner, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The State Project Director, Bihar Education Project Council, Patna, Rastra Bhasa Parisar, Siksha Bha
4. The District Magistrate, Katihar.
5. The Additional Secretary, Office of the Lokayukt, Bihar, Patna.
6. The Civil Works Manager Incharge, Rastra Bhasa Compound, Siksha Bhawan, Saidpur, Patna.
7. The District Program Officer, Primary Education and Sarva Siksha Abhiyan, Katihar.
8. The District Education Officer, Katihar.
9. The Block Education Officer, Barari, District- Katihar.
10. The Incharge Headmaster, Utkramit Madhya Vidyalaya, DhenuaBarari, District- Katihar.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16798 of 2018

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Rupesh Kumar Singh, Son of Sri Ganesh Prasad Singh Resident of Village- Jhandapur, Police Station- Thana Bihpur, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar

2. The Principal Secretary, General Administration Department Government of Bihar, Patna.
3. The State Project Director, Bihar Education Project Council, Patna, Rastra Bhasa Parisar, Siksha Bhawan, Patna.
4. The District Magistrate, Katihar.
5. The Additional Secretary, Office of the Lokayukt, Bihar, Patna.
6. The Civil Works Manager(Incharge), Rastra Bhasa Compound, Siksha Bhawan, Saidpur, Patna.
7. District Program officer, Primary Education and Sarv Siksha Abhiyan, Katihar.
8. The District Education Officer, Katihar.
9. The Block Education Officer, Barari, District- Katihar.
10. The Incharge Headmaster, Utkramit Madhya Vidyalaya, Dhenua (Barari), District- Katihar.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 15391 of 2018)
For the Petitioner/s : Mr.Indu Bhushan
For the Respondent/s : Mr. Manish Kumar- GP4
Mr. Manoj Kumar, AC to GP-4
For the Respondent Nos. 3, 6 & 7:Mr. Girijish Kumar
(In Civil Writ Jurisdiction Case No. 16798 of 2018)
For the Petitioner/s : Mr.Indu Bhushan
For the Respondent/s : Mr.Jitendra Kr.Roy

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 26-06-2019

1. Heard the learned counsel for the parties.

2. Both the writ petitions have been heard together and are being disposed off by this common order.

3. The petitioners, who are the Junior Engineer and the Assistant Engineer, Bihar Education Project Council, Katihar, have been subjected to a punishment of deduction of 10 per cent of their salary permanently, i.e., for the entire tenure of their contractual appointment.

4. The aforesaid order has been challenged on various grounds including the non-observance of the procedure for imposing such penalty.

5. The order impugned has been passed on 03.07.2018 contained in memo no. 3621 by the Director of Bihar Education Project.

6. The perusal of the order clearly indicates that an enquiry was conducted pursuant to the order passed in connection with Case No. 01/Lok (Siksha)65/2013 (Smt. Sarswati Devi Versus Mukhiya, Gram Panchayat Raj, Bishanpur, Katihar). During the course of enquiry, it was reported that the technical enquiry of four schemes for the construction of additional class rooms of the Upgraded Middle School, Dhenua (Barari) was carried out after considerable delay and no effort was made by the employees of the State

Project / the petitioners / the Engineers for getting the work completed within time. The order further indicates that since the petitioners were responsible for the same, they have been subjected to deduction of 10 percent of the salary, lock, stock and barrel.

7. One of the grounds raised by the petitioners is that even a deduction of 10 to 20 per cent of the salary has though been provided in the Service Rules of Bihar Education Project Council, but there has not been any amendment with respect to the procedure for imposing such penalty. Rule 54 of the service Rules of 2010 indicates that an employee has to be informed in writing about the action proposed to be taken against him and all the allegations on which it is proposed to be taken and be given an opportunity to make any representation he may wish to make. A special provision has been made with respect to imposition of a major penalty, in which event, the employee concerned will have a right to ask for a personal hearing / oral enquiry. However, the rule further specifies that no order imposing penalty shall be passed except after desired enquiry has been held and an opportunity has been given to

the employee to make any representation against the penalty proposed / awarded in the light of the findings of the enquiry officer and conclusions hereto.

8. Mr. Girijesh Kumar, learned Advocate appearing for the respondents submits that apart from adding the punishment of 10 to 20 per cent of deduction from the salary against an erring employees, there has been a modification in the procedure for imposing of such penalty also and the procedure about which reference has been made stands deleted in the modified set of rules.

9. Notwithstanding the deletion / modification in the Rules, it does not appear to be reasonable that any person be put to a punishment, whether minor or major, without subjecting him to any inquiry and affording him an opportunity of representing his cause.

10. The order impugned clearly depicts that the opinion was arrived at by the signatory of the order only on the basis of some enquiry having been held in a Lokayukt proceeding with respect to a complaint lodged by an aggrieved

party against the Mukhiya and others, in which proceeding, the petitioners were not heard.

11. In any view of the matter, if an employee is being subjected to a penalty having serious monetary consequences, it would be only fair to make him know that the proposed punishment is of deduction of 10 per cent of salary for indefinite period / entire period of contractual service. The petitioners also should have been made known their fault. This is no way of imposing punishment on an employee as such orders come as a bolt from the blue and cannot be countenanced. The manner in which the order has been couched reflects a cavalier approach. Even if an employee is a contractual employee, the relationship of master and servant is established during the tenure of the service and his right to know the ground on which he is being punished financially cannot be taken away. The Director, State Education Project has not taken care to even state in the order as to what was found against the petitioners for justifying the order of deduction of 10 per cent of salary for an indefinite period.

12. The order, therefore, suffers from complete lack of application of mind which is highly regrettable.

13. For the aforesaid reasons, the order dated 03.07.2018 is set aside.

14. The matter is remitted to the Project Director, Bihar State Education Project for writing out a fresh order after giving reasonable opportunity to the petitioners to explain their cause.

15. With the aforesaid observation / direction, this petition stands allowed and disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	29.06.2019
Transmission Date	