

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13087 of 2019

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Ajay Kumar, Male, aged about 43 years, Son of Late Yogendra Singh,
Resident of Village-Majirwa Khurd, P.O.-Misir Batraha, P.S.-Fulawaria,
District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director, Secondary Education, Govt. of Bihar, Budh Marg, Patna.
2. The Director, Secondary Education, Govt. of Bihar, Budh Marg, Patna.
3. The Regional Deputy Director of Education, Saran Division, Chapra.
4. The District Education Officer, Gopalganj.
5. The District Programme Officer (Establishment), Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh, Adv.

For the Respondent/s : Mr. Ram Vinay Pd. Singh, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 02-07-2019

The petitioner has challenged the order dated 21.06.2019 passed by the Director, Secondary Education, Govt. of Bihar, Patna (*in short the Director, Secondary Education*), directing the suspension of the petitioner during the pendency of the departmental proceeding. By the same order, the Regional Deputy Director of Education, Saran



Division, Chapra has been directed to summon the Divisional Establishment Committee of the Department and pass necessary orders with respect to the transfer of the petitioner and others.

2. From the records, it appears that a public complaint was lodged before the Chief Minister, alleging various irregularities in the transfer of Clerks in the Department and, in particular, the corrupt practices of the petitioner. The aforesaid complaint was acted upon and the Director, Secondary Education *vide* his communication dated 08.02.2019 to the Regional Deputy Director, Saran Division, Chapra asked for an information about the petitioner and nature of action taken against him on the basis of the aforesaid complaint. The aforesaid communication takes note of the fact that against the petitioner, a criminal case has been lodged at Gopalganj. An explanation also was sought as to how the transfer of such Clerks which had been effected only one and half years ago, was again reviewed and transfer of such Clerks was made to their respective earlier places.



3. Pursuant to the aforesaid communication, a departmental proceeding was initiated against the petitioner in terms of the Bihar Government Servants (Classification Control & Appeal) Rules, 2005 and the Presenting and Conducting Officers were designated. Charges also were framed against the petitioner on 29.01.2019 under four heads, with a summary of the evidence in support of the aforesaid charges.

4. Thereafter, the impugned order has been passed.

5. Mr. Bipin Bihari Singh, the learned Advocate for the petitioner has submitted that the entire proceeding is vitiated for the reason that on a public complaint before the Chief Minister, the petitioner has been subjected to a departmental proceeding. No effort has been made by the Department to even seek an explanation against the charges raised against the petitioner. All of a sudden, a departmental proceeding has been initiated against the petitioner on the basis of the aforesaid complaint, which in the estimation of the petitioner, is a vague complaint. There



could be myriad reasons for complaining against an Officer or a Clerk. The other ground of challenge of the petitioner is that notwithstanding the departmental proceeding having been initiated against him and the framing of the charge, there was no occasion for the Director, Secondary Education, who is the Appellate Authority, to put him under suspension when the Disciplinary Authority had chosen not to put him under suspension.

6. The aforesaid order has been challenged on two further grounds. Firstly, the Director, Secondary Education, being the Appellate Authority, could not have passed such order for it would be in the nature of *cul de sac* for the petitioner in defense of the charge against him and secondly, the order suffers from lack of application of mind.

7. In this context, it has been urged that any order has to have a basis and the order must be an informed one. There is no reason assigned except for the pendency of a departmental proceeding and a criminal case lodged against the petitioner.

8. The learned counsel appearing for the



respondents/State has submitted that the complaint against the petitioner forms part of the charge which has been framed against him and for which a departmental proceeding has been initiated. Apart from this, it has been submitted that but for the connivance of the petitioner and his likes, such irregularities in the matters of transfer could not have taken place. It has further been submitted that it would not be in the mouth of the petitioner to ask for quashing of the proceeding or revocation of the suspension on the ground of principle of natural justice of giving him a hearing in the beginning, especially when a criminal case has also been lodged against him with the allegation of collecting money unauthorizedly.

9. From the perusal of the records and on hearing the learned counsel for the parties, it appears that there were many transfers in the Department before the due date and persons including the petitioner who had been transferred to a different place were again transferred within a short span of one and half years. This by itself would not have been sufficient ground for subjecting the petitioner to



either departmental proceeding or suspension during the continuance of such departmental proceeding, but the allegations get further exacerbated by the lodging of a criminal case against the petitioner in Gopalganj. The petitioner ought to have been put to a show-cause notice to explain whether the charges against him were genuine; nonetheless if a departmental proceeding has been initiated against him with some of the charges in the complaint as distinct heads of the charge, the petitioner would have ample opportunity to rebutting those charges. At the time of initiation of the departmental proceeding, the Disciplinary Authority did not chose to suspend the petitioner either in contemplation of initiation of such departmental proceeding or during the continuance of the same.

10. The Director, Secondary Education, however, by the order impugned has directed the Disciplinary Authority to put the petitioner under suspension and fix the place of posting of the petitioner away from the Head Office at Gopalganj for an impartial departmental proceeding.



11. The challenge to the aforesaid order by the petitioner is on the ground that this precludes any possibility of the petitioner getting a fair deal, in case the decision of the departmental proceeding is against him and the order is taken in appeal as the Appellate Authority has already disclosed his mind.

12. The aforesaid objection is not tenable as the Director, Secondary Education has only acted in his capacity as a superior Officer, who found that the disciplinary proceeding could not be conducted in a fair manner if the petitioner was allowed to work and officiate as Clerk in the Head Office, especially when there were charges against him for which a criminal case also was lodged. It is in this context that a direction has been issued to the Disciplinary Authority to suspend the petitioner pursuant to which he has been suspended. The mindset of the Director, Secondary Education further gets reflected by the fact that it was observed by him in the order that for proper enquiry, it would only be advisable that the petitioner's posting be fixed away from the Headquarters at Gopalganj.



13. Once, the departmental proceeding is concluded, the opinion of the Enquiry Officer and the decision of the Disciplinary Authority would be the material before an Appellate Authority for him to assess those orders. By that time, evidence would have been collected. Thus, the apprehension of the petitioner that with the aforesaid order of the Appellate Authority while the disciplinary proceeding was still continuing, chances of his being given a fair deal stands precluded. This is too far fetch for this Court to take notice of.

14. Regard being had to the fact that large scale irregularities were discerned in the matters of transfer in the Department and a criminal case also has been lodged against the petitioner, this Court is not inclined to interfere with the order impugned.

15. The petition is, accordingly, dismissed.

16. However, it is made clear that the departmental proceeding against the petitioner shall be concluded without any delay, provided the petitioner cooperates. If the departmental proceeding is not concluded



within a reasonable period of time, preferably within a period of four months from today, it would be open for the petitioner to approach this Court for the needful.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.07.2019
Transmission Date	N/A

