

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18405 of 2016

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Avinash Kumar S/o Sri Hari Ballabh Ray R/o P.O. - Gandhi Mohanpur, P.S. -
Patori, District - Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Samastipur.
3. The District Education Officer, Samastipur.
4. The District Programme Officer Establishment, Samastipur.
5. The Block Development Officer Cum Secretary Block Teacher Appointment Unit, Mohanpur.
6. The Block Education Officer, Mohanpur.
7. The Head Master, Utkramit Middle School, Godhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Verma
For the Respondent/s : Mr.Kameshwar Kumar-Gp17

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 15-07-2019 Heard learned counsel for the petitioner and the

learned counsel appearing on behalf of the State.

Petitioner has approached this Court aggrieved by the
order of termination dated 20.11.2014 contained in Memo
no.21.

Learned counsel for the petitioner submits that
petitioner has been condemned unheard.

The allegation against this petitioner is that he
remained absent for a period of one year.

Learned counsel appearing on behalf of the



respondents would submit that petitioner has remained absent for a period of one year and thereafter escaped from the custody of the police.

In the counter affidavit, the stand of the respondents is that petitioner has alternative remedy and thereafter the present writ application is not maintainable.

Alternative is no bar on three exceptional circumstances, firstly when there is violation of principle of natural justice. Secondly when order is without jurisdiction and thirdly when there is violation of fundamental right.

The decision of the Constitution Bench of the Apex Court in the case of **State of U.P. vs. Mohammad Nooh reported in AIR 1958 SC 86** is the declaration of law as to exhaustion of alternative remedy which is still holding the field.

Considering the admitted position of violation of principle of natural justice, the plea of the respondents as to the availability of the alternative remedy does not merit any consideration. It is accordingly rejected. Adverting to the submission advanced by the counsel for the petitioner that petitioner was dismissed from the service without opportunity of hearing. No order visiting evil and civil consequence can be passed without compliance of natural justice. It is admitted



position that respondents have not followed any fair procedure before terminating the petitioner.

Considering the admitted facts of this case, the order contained in Annexure-6 cannot sustain. The same is accordingly, quashed.

The matter is remitted back to the respondents to take appropriate fresh decision after following the principle of natural justice.

The writ petition is allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

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