

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2510 of 2018

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Sunil Kumar son of Late Shri Krishna resident of MIGH 250, Lohia Nagar,
P.S. Kankarbagh, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Administration Cum Additional Secretary, Education Department, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nandlal Kumar Singh Advocate Mr. Rajeev Nayan Advocate Mr. Manish Kumar Ad,
For the Respondent/s	:	Ms. Binita Singh SC-28 Mr. Apurva Harsh AC to SC-28

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date : 05-02-2019

Heard the learned counsel for the petitioner and the

State.

2. The petitioner has sought setting aside of Memo

No. 487 dated 11.06.2015, letter no. 627 dated 15.07.2015

along with Memo of Charge dated 15.07.2015 and Memo Nos.

746 as well as 554 dated 14.08.2015 and 24.07.2017

respectively issued by the Director (Administration) cum

Additional Secretary, Education Department, Government of



Bihar, Patna whereby departmental proceeding has been initiated against the petitioner and he has been put under suspension.

3. It has been submitted on behalf of the petitioner that in view of Rule 9 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, only the appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the government by general or special order may place a government servant under suspension, in contemplation of departmental proceeding and in the present case, the Director (Administration) is neither the appointing authority nor has been authorized by general or special order to exercise such powers under Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

4. It appears that the petitioner, who at the relevant time, was posted as Deputy Secretary, Bihar School Examination Board, Patna and was also officiating as Incharge Joint Secretary, was arrested on a complaint made by one



Madan Bihari Singh before the S.P., Vigilance. After the arrest in the trap, which was laid on him, an F.I.R. was registered bearing Vigilance P. S. Case No. 40 of 2015 under Sections 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. Because of the involvement of the petitioner in the criminal case, he was placed under suspension and a departmental proceeding was initiated against him. The memo of charge was also served upon him. By order dated 14.08.2015, the suspension of the petitioner was revoked but he was again placed under suspension vide order dated 24.07.2017 and the conducting officer and presenting officer were also appointed for the departmental proceeding against the petitioner.

5. It has, thus, been urged on behalf of the petitioner that the suspension order could not have been passed by the Director (Administration) in view of Rule 9 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

6. The additional argument of the petitioner is that under similar circumstances, suspension orders with respect to



other employees were revoked on the ground of the lack of authority in such officer in issuing any suspension order pending departmental proceeding.

7. It was asserted that under the Litigation Policy of the State of Bihar, the same issue ought not to be raked up, inviting separate orders by the Court in similar circumstances and therefore the suspension of the petitioner be set aside.

8. It further appears from the record that the petitioner had earlier preferred a writ petition bearing C.W.J.C. No. 1848 of 2016 for staying the departmental proceeding. The Court vide order dated 01.03.2016 directed for staying of the departmental proceeding for a limited period of 9-10 months.

9. As opposed to the aforesaid contention raised on behalf of the petitioner, learned counsel appearing for the State has responded by intimating this Court that Director (Administration), Education Department, has been authorised and declared the controlling authority for the cadre of Bihar Education Services under Article 11, Section 1 of Chapter-II of



Bihar Education Code. The relevant part of the Bihar Education Code is extracted here for ready reference:

"11. Controlling Officer - The Director of Public Instruction (called the Director) used to be the need of the Department of Education and Chief Educational Advisor to the State Government but subsequent upon the expansion of institutions at the elementary, secondary and higher education stages and growth in number of inspectorial officers at the different field levels during the first to fourth five years plans, it became imperative for the State Government to bifurcate and decentralize the institution of Director of Public Instruction into the following different Directorates within the Department.

(i) Director of Education (Administration), Bihar - Director of Education (Administration), (to control and deal with service conditions of the members of the Bihar Education Service up to Director level and all members of Bihar ex-cadre posts in the Department to be filled up either by an officer of the Indian Administration Service).

(ii) The Director of Education (Administration) controls the service condition of entire staff of the Secretariat viz, class IV servants, all Assistants, Section Officers, Registrars and Budget Officers."

10. From the aforesaid authorization referred to above, the objection raised by the petitioner does not appear to



be tenable. The State Government has taken a decision that the Director (Administration) would be the competent controlling authority for the officers of Bihar Education Service. In that event, it cannot be said that there has been any breach of the provisions contained in Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

11. The cases which have been cited by the petitioner are based on different set of facts. This Court has also been informed that in one of the cases, the Director (Administration) has not been accepted to be the controlling / authorized officer for issuing an order of suspension by the Court but in another case, namely, *C.W.J.C. No. 16501 of 2016 (Birendra Kumar Singh Versus The State of Bihar & Ors.)*, the authority of the Director (Administration) for issuing such order of suspension in his capacity as controlling authority of the Bihar Education Service Cadre has been accepted. A statement also has been made that the department has filed a review petition in *C.W.J.C. No. 5978 of 2017 (Srinivas Chandra Tiwary Versus The State of Bihar & Ors.)* wherein a Bench of this Court had set aside the order of suspension on the ground of Director



(Administration) cum Additional Secretary, Education Department, Government of Bihar, Patna to be neither the disciplinary authority nor the appointing authority.

12. It would also be worthwhile to refer to Rule 16 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005:

"16. Authority to institute proceedings. - The Government or appointing authority or any authority to which the appointing authority is subordinate or any other authority empowered by general or special order of the Government may-

(a) institute disciplinary proceedings against any government servant;

(b) direct a disciplinary authority to institute disciplinary proceedings against any government servant on whom that disciplinary authority is competent to impose any of the penalties specified in rule 14 under these Rules.

(2) A disciplinary authority, competent under these Rules to impose any of the penalties specified in clauses (i) to (v) of rule 14, may institute disciplinary proceedings against any government servant for the imposition of any of the penalties specified in clauses (vi) to (x) of rule 14 notwithstanding that such disciplinary authority is not competent under these rules to impose any of



the penalties under clauses (vi) to (x) of Rule 14.”

13. Thus, a combined reading of Rule 9 and 16 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 read with Article 11, Section 1 of Chapter-II of Bihar Education Code, the Director (Administration) cum Additional Secretary, Education Department, Government of Bihar, Patna (Respondent No. 3) has the authority to issue order of suspension against an employee in contemplation of departmental proceeding.

14. For the aforesaid reasons, this writ petition is dismissed as devoid of merits.

Under the said circumstances, there shall be no order as to costs.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	15.02.2019
Transmission Date	

