

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21447 of 2018

=====

Sudeshwar Sah, Son of Late Gaya Sah, Resident of Village- Gopalpur, P.S.
Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Department of Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
5. The District Programme Officer, Establishment, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate Mr. Kundan Kumar, Advocate
For the Respondent/s	:	Mr.Priyadarshi Matri Sharan, AC to AAG-15

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 27-02-2020 Heard learned counsel for the petitioner and the respondents.

Manifolds submissions have been advanced on behalf of the petitioner in support of the writ application.

Learned counsel for the petitioner submits that the petitioner was punished in a departmental proceeding where no evidence was led to prove the charges. He next contended that the disciplinary authority has taken a different view than the enquiry officer. While differing with the report of the enquiry officer, the disciplinary authority has not followed the rule18 of the Bihar Government Servants (Classification, Control and



Appeal) Rules, 2005 and the judgment of the Apex Court in the case of **Punjab National Bank and Ors. vs Kunj Behari Misra**, reported in **(1998) 7 SCC 84**.

The Constitution Bench of the Apex Court has occasion to decide the effect of infirmity in the conduct of departmental proceeding in the case of **Managing Director, ECIL Vs. B.Karunakar & Ors**, reported in **(1993) 4 SCC 727**.

In view of the fact that the disciplinary authority while disagreeing with the finding of the enquiry officer has not followed Rule 18 of 2005 Rules and the principles laid down in the case of **Kunj Behari Misra** (supra), the order passed by the disciplinary authority as well as appellate authority is hereby set aside and the matter is remitted back to the disciplinary authority to take appropriate fresh decision at the stage of giving opportunity of hearing on the point of difference of opinion in terms of Rule 18 of 2005 Rules and the principles laid down in the case of **Kunj Behari Misra** (supra).

Since the petitioner has superannuated, the disciplinary authority is required to follow the Rule 43(B) of the Bihar Pension Rules strictly.

Fresh decision, after following the rigours of Rule 18 of 2005 Rules and the principles laid down in the case of **Kunj**



Behari Misra (supra) shall be taken by the respondents in accordance with law positive within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

uday/-

U			
---	--	--	--

