

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5114 of 2020

Vijay Kant Choudhary son of late Upendra Choudhary resident of Village- Basaith, Benipatti, P.S. Benipatti, District- Madhubani, Assistant, Bihar School Examination Board, Patna, presently R/o H.No. 15, Anandpuri, Boring Canal Road, Patna (Presently under Suspension).

... .. Petitioner/s

Versus

1. The Bihar School Examination Board through Chairman, Buddh Marg, Patna.
2. The Chairman, Bihar School Examination Board, Buddha Marg, Patna.
3. The Secretary, Bihar School Examination Board, Buddha Marg, Patna.
4. The Deputy Secretary, Bihar School Examination Board, Darbhanga Regional Office, Darbhanga.
5. The Chief Vigilance Officer, Bihar School Examination Board, Buddh Marg, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Respondent/s : Mr. Gyan Shankar, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 25-08-2020

Heard learned counsel for the petitioner and learned counsel for the Bihar School Examination Board, through video conferencing.

The petitioner has filed the instant writ application for quashing the order contained in memo no.226 dated 1.2.2020 issued under the signature of the Secretary, Bihar School Examination Board, whereby the petitioner was placed under suspension in contemplation of a departmental proceeding, for direction to the respondents to hold an



independent enquiry with regard to the allegation levelled in the daily hindi news paper 'Dainik Bhaskar' dated 10.1.2020 published from Patna and for other reliefs.

It is the case of the petitioner that he was working as an Assistant in the office of the Bihar School Examination Board, Patna (hereinafter referred to as 'the Board'). In the year 2017 he was transferred to the regional office of the Board at Darbhanga. While attending a training programme at Patna he came across the news article in the hindi daily newspaper 'Dainik Bhaskar' wherein allegations were made of Rs.10,000/- being taken by the employee of the Board for verification of the documents in the regional office at Darbhanga. The news item also contained the photograph of the petitioner and one another.

It is submitted by learned counsel for the petitioner that he was served with a notice contained in letter dated 11.1.2020 (Annexure-3) issued under the signature of the Deputy Secretary of the Board at regional office in Darbhanga asking him to file his reply within one hour. In compliance of the same, the petitioner filed his reply within the stipulated time. It is further submitted that on 11.1.2020 an enquiry committee consisting of the Chief Vigilance Officer of the Board and the Administrative Officer of the Board visited the regional office at



Darbhanga and held an enquiry. The enquiry committee submitted its report to the Secretary of the Board on 25.1.2020, which has been brought on record as Annexure-6 to the writ application. By order contained in memo no. 296/2020 dated 1.2.2020 (Annexure-9) issued under the signature of the Secretary of the Board, the petitioner was placed under suspension in contemplation of a departmental proceeding. It was further stated in the said order that the head quarter of the petitioner will be the office of the Vigilance Officer. He will be paid suspension allowance and memo of charges would be issued separately. It is against this order of suspension that the petitioner has preferred the instant writ application for the relief as stated above.

It is submitted by learned counsel for the petitioner that the news report (Annexure - 1) as published in the newspaper was malicious. Further in reference to the show cause notice, as contained in Annexure-3, it was submitted that only one hour was given to the petitioner to submit his show cause. Referring to Annexure-5, it was submitted that notice was published under the signature of Secretary of the Board about incorrect news being published in the daily news paper 'Dainik Bhaskar'. Further in reference to the enquiry report dated



25.1.2020 (Annexure-6), it was submitted that from perusal of Clause 2, it would transpire that primarily it was based only on the newspaper report which on the face of it was malicious. It was submitted that the basis of the newspaper report were incorrect facts which would be evident from perusal of paragraph no. 10 of the writ petition. It has been stated in the said paragraph that while only 225 documents were sent for verification in the regional office, Darbhanga, news paper report mentioned about 1323 certificates of Anganwari Sevika and 1392 certificates of Anganwari Sahaika being sent. It was submitted that the specific averments in paragraph no.10 as mentioned above not having been answered, there being no material against the petitioner except for the news paper report, it was clearly established that the order of suspension being a result of malafide, the same should be set aside. It was submitted that the petitioner will participate in the departmental proceeding. It was submitted that from the averments made in paragraph no.12 of the writ application, it would transpire that the certificates of some of the candidates did not match with the DMS records and on the petitioner not accepting the bribe offered by the guardian, and on sending the correct report, he was threatened with false implication. Referring to Annexure-7,



it was submitted that there was some technical issues also over non functioning of the DMS Server which was hampering the work. Thus, it was submitted on behalf of the petitioner that the order of suspension be quashed and he would participate in the departmental proceeding.

It has been submitted by learned counsel for the Board that by the order impugned dated 1.2.2020 the petitioner has been placed under suspension in contemplation of a departmental proceeding for dereliction of duty, intentionally keeping hundreds of cases pertaining to verification of candidates, pending for months, for extraneous considerations. It was submitted that on receipt of information of demand of illegal gratification, an enquiry was conducted by the Chief Vigilance Officer and the Administrative Officer of the Board and it was detected that the petitioner had prolonged the work of verification of certificates without any reason for more than three months which showed his ill motive. The receipt and dispatch register was not properly maintained and a report vide Annexure-6 was submitted recommending lodging of FIR and for initiation of a departmental proceeding. Accordingly, the petitioner was placed under suspension in contemplation of a departmental proceeding. It was further submitted by learned



counsel for the Board that memo of charges (Prapatra-'Ka') had also been issued vide memo no. SthaPre-462 dated 19.2.2020. The Chief Vigilance Officer of the Board has been appointed as an Enquiry Officer and Deputy Secretary-cum-Nodal Officer of the Board has been appointed as the presenting officer. It has been submitted that the departmental proceeding is expected to be concluded at the earliest provided the petitioner cooperates. The action of the respondent authorities are within the provisions of Rule 48 of the Bihar School Examination Board Regulation, 1964. It is submitted that the petitioner was placed under suspension and a departmental proceeding was started only when on verification of the information of demand of illegal gratification by the petitioner was prima facie found to be true. It was further submitted that the order of suspension was within the jurisdiction of the authority who passed the said order and the same was not by way of punishment. It was finally submitted that the order impugned being legal and valid should not be interfered with and if the Court so desires, it may fix a time for concluding the departmental proceeding. The Board shall abide by the direction of this Court and conclude the proceeding subject to cooperation of the petitioner.

Having heard learned counsel for the parties and on



going through the facts of the case, it transpires that pursuant to a news item (Annexure - 1) published in the hindi daily newspaper dated 10.1.2020, the petitioner was served with a show cause notice dated 11.1.2020 to which he replied. An enquiry was conducted by the Chief Vigilance Officer and the Administrative Officer of the Board, who submitted their joint report contained in letter no.391/2020 dated 25.1.2020 (Annexure-6). It is after submission of the said report that by order dated 1.2.2020 (Annexure-9) issued under the signature of the Secretary of the Board that the petitioner has been placed under suspension. This order of suspension is under challenge in the instant writ application.

On perusal of the enquiry report dated 25.1.2020, it transpires that in clause 2(I) of the report which deals with the charges and evidence, the same mentions that in a sting operation the petitioner was caught on camera, making a deal with a Sevika (Anganbari Sevika). Further clause 2 (II) of the said report mentions that by way of evidence, that the offices at Darbhanga and Muzaffarpur of the newspaper (Dainik Bhaskar) which had published the news article, had provided the pendrive containing the details of the sting operation by way of evidence. Further clause 3 of the report mentions about the finding of the



Committee of the verification of 204 candidates, having been kept pending in Darbhanga division for over three months. It further mentions that in the C.D. (Compact Disc) provided by hindi news daily Dainik Bhaskar, the voice of the petitioner is clear and it is after the direction of the petitioner that a person can be seen taking out money from his pocket, counting the same but the face could not be seen at the time of the money being given. From the facts stated hereinabove and also referring to the materials that has come in the enquiry report, it cannot be said that the authority did not have any material to proceed against the petitioner and that the basis of order of suspension in contemplation of the departmental proceeding was only the newspaper report.

Learned counsel for the Board has submitted that the order of suspension is not by way of punishment but the same is in contemplation of a departmental proceeding and the concerned authority were well within their power to pass such an order within clause 48 of the Bihar School Examination Board Regulations, 1964.

From perusal of the relevant provision of the Regulations, it is clear that the respondent authority has the jurisdiction to pass an order of suspension in contemplation of a



departmental proceeding.

The counsel for the petitioner also mainly challenges the order impugned stating that the same has been passed on a malicious and malafide news article published in the hindi daily news paper. From the materials mentioned hereinabove, it is evident that the newspaper article was not the only material for passing the order of suspension and in fact, the basis of placing the petitioner under a departmental proceeding and also suspending him is mainly based on the enquiry report referred to hereinabove.

In view of the facts stated hereinabove the Court finds no merit in the writ application and, as such, the same is dismissed.

(Partha Sarthy, J)

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