

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6966 of 2020

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Lal Kund Kumar Son of Nunulal Mandal, Resident of Village- Baijnathpur,
Ward No. 05, P.S. Sour Bazar, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through its Addl. Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Addl. Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director Of Primary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Darbhanga Division, District- Darbhanga.
5. The District Education Officer, Supaul, District- Supaul.
6. The District Programme Officer (Establishment), Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey
For the Respondent/s : Mr.Madanjeet Kumar (Gp20)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-04-2021

1. Heard the learned counsel for the parties.
2. The present writ petition has been filed for quashing the order dated 18.05.2018, passed by the respondent no. 3 i.e. the Director (Primary Education), Government of Bihar, Patna, whereby and whereunder the petitioner has been dismissed from service. The petitioner has further prayed for quashing the order dated 20.01.2020, issued by the Additional Chief Secretary, Department of Education, Government of Bihar, Patna i.e. the respondent no. 2, whereby and whereunder the appeal preferred by the petitioner has been rejected as also



has prayed for quashing of the inquiry report dated 24.10.2017 and for directing the respondents to re-instate the petitioner with all consequential benefits.

3. The brief facts of the case are that while the petitioner was posted as Block Education Officer, Triveniganj, District-Supaul, he is alleged to have been wrongly implicated by one Manoj Kumar Mehta who was then posted as Centre Coordinator (Teacher) at Middle School Uparkha in the Block-Triveniganj of Supaul District. The complainant in his complaint dated 24.11.2015, made before the Vigilance Investigation Bureau, against the petitioner and another Assistant Teacher namely Vidyanand Kumar posted at Middle School, Karmaniya, had alleged that the said two persons had demanded bribe for granting enhancement in pay scale, on account of passing of the efficiency test. It has been stated by the petitioner that prior to filing of the aforesaid complaint dated 24.11.2015 by the complainant, the petitioner, in the capacity of Block Education Officer, Triveniganj, had submitted an inquiry report against the complainant namely Manoj Kumar Mehta regarding his indiscipline and uncontrolled behaviour against the Headmasters and other teachers of the Primary School, Medhia and in fact, the



statement of the lady teachers, who were also subjected to misbehaviour by the said Manoj Kumar Mehta, were also recorded during the inquiry proceedings conducted by the petitioner herein, whereafter, upon submission of the inquiry report by the petitioner, proceedings were initiated against the said Manoj Kumar Mehta, resulting in him being restrained from working as a Co-ordinator. It is submitted that on account of vendetta against the petitioner, the complainant had filed the aforesaid complaint dated 24.11.2015.

4. It appears that the Vigilance Investigation Bureau had constituted a trap team and conducted a raid on 04.12.2015 at the office of the Block Education Officer, Triveniganj, District-Supaul and is alleged to have caught the petitioner taking a bribe of a sum of Rs. 10,000/-. Thereafter, the petitioner was served with a memo of charge, containing Prapatra-Ka vide letter dated 17.06.2016 and a departmental proceeding was initiated against the petitioner on the allegation of him having demanded a sum of Rs. 10,000/- as bribe from Manoj Kumar Mehta for granting him enhancement in pay scale, for showing negligence in his duties and having been caught red-handed by the trap team of Vigilance Investigation Bureau on 04.12.2015 at the office of the Block Education



Officer taking bribe of a sum of Rs. 10,000/-. The petitioner had then submitted his replies dated 16.12.2016 and 27.06.2017 stating therein that the independent witnesses have denied the incident, of the petitioner having been caught red-handed taking bribe of a sum of Rs. 10,000/-, to have taken place before them and in fact have also submitted their statements on oath/ affidavit. It is also the case of the petitioner that the complainant was drawing the enhanced salary since 01.01.2015, hence a wrong complaint was made by the complainant.

5. The Inquiry Officer had conducted the departmental inquiry and had submitted the inquiry report vide letter dated 16.01.2017, wherein it has been concluded that considering the situation, the clarification submitted by the delinquent as also the available documents and evidence, it would not be appropriate to record any opinion, nonetheless the Inquiry Officer had come to a finding that the independent witnesses to the alleged raid conducted by the Vigilance Investigation Bureau in the office of the Block Education Officer, Triveniganj, Supaul, have stated on oath, before the Sub-Divisional officer, Triveniganj, that their signature as witnesses are forged. In fact, the Inquiry Officer has also come



to the conclusion that the alleged incident of trap raid, conducted by the Vigilance Investigation Bureau, was a result of malice of the complainant towards the petitioner herein. It appears that thereafter, the Director (Primary Education) had written to the Inquiry Officer vide letter dated 16.10.2017 that the inquiry report submitted by him is not clear, hence a clear inquiry report be made available up to 22.10.2017, failing which appropriate action will be taken against the Inquiry Officer. It appears that the Inquiry Officer, being threatened, coerced and intimidated by the Director, Primary Education, Education Department, Bihar, submitted a perfunctory inquiry report dated 24.10.2017, based on no evidence and merely stating therein that since the petitioner was caught red-handed by the Vigilance raiding party taking a bribe of Rs. 10,000/-, all the charges no. 1 to 3 are found to be proved. It would be apt to reproduce the inquiry report dated 24.10.2017 herein below :-

“उपर्युक्त विषयक भवदीय प्रसंगाधीन पत्र जो दिनांक 24.10.17 को इस कार्यालय में प्राप्त हुआ है के संदर्भ में निवेदन पूर्वक कहना है कि श्री लालकुन्द कुमार, तत्कालीन प्रखंड शिक्षा पदाधिकारी, त्रिवेणीगंज, सुपौल सम्प्रति निलंबित को निगरानी धावा दल द्वारा रंगे हाथों मो0—10,000.00 (दस हजार रुपये)



रिश्त लेते हुए गिरफ्तार किया गया है । वर्णित स्थिति में श्री लालकुन्द कुमार के विरुद्ध आरोप सं०— 1 से 3 तक अंकित सभी आरोप प्रमाणित है ।

अतः प्रमाणित आरोपों में श्री लालकुन्द कुमार, तत्कालीन प्रखंड शिक्षा पदाधिकारी, त्रिवेणीगंज, सुपौल के विरुद्ध आवश्यक अग्रेतर कार्रवाई की जा सकती है ।”

The disciplinary authority had then issued a second show cause notice to the petitioner herein which was replied to by the petitioner vide his letter dated 15.02.2018, inter alia also stating therein that the inquiry report is based on no evidence and in fact, no opportunity was granted to the petitioner to present his case before submission of the second inquiry report dated 24.10.2017, which, in any view of the matter, has been submitted on account of threat/intimidation by the Director (Primary Education) and moreover, the petitioner was not present in his office on the alleged date and time of raid, conducted by the Vigilance Investigation Bureau. Nonetheless, the Director (Primary Education) by his letter dated 18.05.2018, dismissed the petitioner from his services. The petitioner had then challenged the said order of dismissal dated 18.05.2018 by filing an appeal, however the same has



also been dismissed by an order dated 20.02.2020 passed by the Additional Chief Secretary, Education Department (Primary Education Directorate), Bihar.

6. The learned Senior Counsel for the petitioner has submitted that the inquiry report dated 16.01.2017 would show that the same is based on no evidence, inasmuch neither any oral nor any documentary evidence was produced by the prosecution, hence the said inquiry report is of no value and non-est in the eyes of law. In fact, the Inquiry Officer in his inquiry report dated 16.01.2017 has also found that the petitioner was not having any complicity in the alleged occurrence and the entire incident had taken place on account of malice and ill-motive of the complainant against the petitioner. It is further submitted that as far as the inquiry report dated 24.10.2017 is concerned, the same has been submitted under threat and coercion of the Director (Primary Education), as is apparent from his letter dated 16.10.2017, which in fact amount to indiscipline on the part of the said Director (Primary Education) and requires initiation of departmental proceedings against him as also warrants strict disciplinary action on account of his ill-intention, malice and illegal act. It is also submitted that the petitioner has not been



granted any opportunity to put forth his case before submission of the second inquiry report dated 24.10.2017, hence the same is non-est in the eyes of law and moreover, a bare perusal of the same would depict that no reason whatsoever or for that matter any evidence has been disclosed therein so as to come to a conclusion that the charges no. 1 to 3 have been proved, hence on this ground as well, the inquiry report is fit to be quashed. Lastly, it is submitted that a bare perusal of the impugned order of dismissal of the petitioner from his services dated 18.05.2018, issued by the Director (Primary Education), would show that the same is based on no evidence, inasmuch as reliance has been placed on a perfunctory inquiry report dated 24.10.2017, which is also based on no evidence and in fact, does not take into account the detailed inquiry report dated 16.01.2017, hence is fit to be set aside. The learned Senior Counsel for the petitioner has relied on various judgments, reported in **(2009) 2 SCC 570 (Roop Singh Negi vs Punjab National Bank & Ors.)**, **(1999) 3 SCC 679 (Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.)**, **(2014) 3 SCC 636 (M/S Stanzen Toyotetsu India P. Ltd. vs Girish V. & Ors)**, **AIR 2017 SC 3698 (State through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava)**,



2018(3) PLJR 329 (Anand Kumar Bardhan v. the State of Bihar & Ors.), 2021 (1) PLJR 111 (Upendra Mandal v. The State of Bihar and ors.) and 2021 (2) BLJ 256 (Krishna Kant Jha v. State of Bihar and ors.)

7. Per contra, the learned counsel for the respondent-State has submitted that there is no procedural infirmity in the conduct of the departmental proceedings, hence this Court is not required to sit in appeal, thus the findings of the Inquiry Officer as well as the order of punishment qua the petitioner dated 18.05.2018 are fit to be upheld by this Hon'ble Court. Upon a query having been made by this Court with regard to the mode, manner and nature of the inquiry report dated 24.10.2017, submitted by the Inquiry Officer, as also regarding the same being based on no evidence, the learned counsel for the respondent-State is not in a position to defend the same. In fact, the learned counsel for the respondent- State has also not been able to answer the query of this Court as to under what circumstances, the disciplinary authority has failed to consider the inquiry report dated 16.01.2017, in the order of punishment of dismissal dated 18.05.2018.

8. I have heard the learned counsel for the parties and gone through the materials on record. The undisputed fact



is that neither any oral evidence has been led by the prosecution nor any documentary evidence has been produced by the prosecution to prove the charges leveled against the petitioner and moreover, the members of the trap team as also the Investigating Officer of the Vigilance case lodged against the petitioner have not been examined by the Inquiry Officer in order to prove the charges leveled against the petitioner, whereas on the contrary, the petitioner has produced evidence of independent witnesses to the trap raid conducted by the Vigilance Investigation Bureau, who have stated that their signatures have been forged, meaning thereby that no raid was conducted by the Vigilance Investigation Bureau. This Court further finds that as far as the first inquiry report dated 16.01.2017 is concerned, even the Inquiry Officer has not found the charges to have been proved and as far as the inquiry report dated 24.10.2017 is concerned, no evidence has been referred to, much less any material is available on record, so as to arrive at a conclusion that the charges have stood proved, hence both the inquiry reports dated 16.01.2017 and 24.10.2017 are not only based on no evidence but also shows the innocence of the petitioner. In this regard, it would be useful to refer to a judgment rendered by the Hon'ble Apex



Court, reported in (2009) 2 SCC 570 (Roop Singh Negi vs Punjab National Bank & Ors.), paragraphs no. 14, 15 and 23 whereof are reproduced herein below :-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the



appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on



some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

9. In the aforesaid case of Roop Singh Negi (supra), the only evidence available with the disciplinary authority was the confession of the delinquent and the FIR. No witness was examined in the said case to prove the documents, rather the management witnesses merely tendered the documents. This exercise was held to be insufficient by the Hon’ble Apex Court to uphold the charge and it was also held that the allegations made in the FIR simplicitor, not proved by leading evidence, by itself cannot be treated as evidence. The aforesaid judgment rendered by the Hon’ble Apex Court in the case of **Roop Singh Negi (supra)** squarely covers the present case.

10. In this connection, reference be also had to a



judgment rendered by the Hon'ble Apex Court, reported in **1999 2SCC 10 (Kuldeep Singh v. The Commissioner of Police and ors.)**, paragraphs no. 4 to 10, 25 to 32 and 39, whereof are being reproduced herein below :-

“4. Learned counsel for the appellant has contended that the findings recorded by the Enquiry Officer cannot be sustained as the enquiry itself was held in utter violation of the principles of natural justice. It is also contended that there was no evidence worth the name to sustain the charge framed against the appellant and, therefore, the findings are perverse particularly as no reasonable person could have come to these findings on the basis of the evidence brought on record.

Learned counsel appearing on behalf of Union of India has, on the other hand, contended that the enquiry was held in consonance with the principles of natural justice and during the course of the enquiry, full opportunity was given to the appellant to defend himself. As far the evidence is concerned, it is contended that though it is true that none of the complainants was examined but on account of Rule 16(3) of the Delhi Police (F&A) Rules, 1980, it was not required to produce



the complainant in person as the Rule itself contemplated that in the absence of a witness whose presence could not be procured without undue delay, inconvenience or expense, his statement, already made on an earlier occasion, could be placed on record in the departmental enquiry and the matter could be decided on that basis. It was under this Rule that the previous joint statement of the complainants was brought on record without examining any of them. Learned counsel for the respondents contended that the scope of judicial review in disciplinary proceedings is extremely narrow and limited. The Court cannot, it is contended, re-examine or re-appraise the evidence and substitute its own conclusion in place of the conclusions arrived at by the Enquiry Officer or the disciplinary authority on that evidence.

5. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those



findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority.

6. In Nand Kishore v. State of Bihar, AIR 1978 SC 1277 : 1978(3) SCC 366 : 1978(3) SCR 708, it was held that the disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which, and, that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore,



there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that even, the findings recorded by the Enquiry Officer would be perverse.

7. The findings, recorded in a domestic enquiry, can be characterised as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of the evidence. This principle was laid down by this Court in *State of Andhra Pradesh v. Sree Rama Rao*, 1964(2) LLJ 150 : AIR 1963 SC 1723 : 1963(3) SCR 25, in which the question was whether the High Court, under Article 226, could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India v. Prakash Chand Jain*, 1969(2) LLJ 377 (SC) : AIR 1969 SC 983 and *Bharat Iron Works v. Bhagubhai Balubhai Patel & others*, 1976 Labour & Industrial Cases 4 (SC) : AIR 1976 SC 98 : 1976(2) SCR 280 : 1976(1) SCC 518. In *Rajinder Kumar Kindra v. Delhi Administration through Secretary (Labour)*



and others, ASIR 1984 SC 1805: 1985(1) SCR 866 : 1984(4) SCC 635, it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.

8. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

9. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there



is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

10. In the light of the above principles, let us scrutinise the case in hand.

25. What immediately strikes the mind is that Smt Meena Mishra who is alleged to have paid the amount of Rs 1000 to the appellant, stated in clear terms as a witness for the Department that she had not made any payment to the appellant. This payment is not proved in any other manner as none of the three recipients of the above amount, who were the complainants, has been produced at the departmental enquiry, though two of them, namely, Radhey Shyam and Rajpal Singh were proposed to be examined.

26. Non-production of the complainants is sought to be justified with reference to Rule 16(3) of the Delhi Police (P&A) Rules, 1980. Rule 16(3) is as under:



“If the accused police officer does not admit the misconduct, the EO shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible, the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The EO is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer be procured without undue delay, inconvenience or expense necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who



had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the EO may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record.”

27. This Rule which lays down the procedure to be followed in the departmental enquiry itself postulates examination of all the witnesses in the presence of the accused who is also to be given an opportunity to cross-examine them. In case, the presence of any witness cannot be procured without undue delay, inconvenience or expense, his previous statement could be brought on record subject to the condition that the previous statement was recorded and attested by a police officer superior in rank than the delinquent. If such statement was recorded by the Magistrate and attested by him, then also it could be brought on record. The further requirement is that the statement either should have been signed by the person concerned, namely, the person who has made that statement, or it was recorded during an investigation or a judicial enquiry or trial. The Rule further provides



that unsigned statement shall be brought on record only through the process of examining the officer or the Magistrate who had earlier recorded the statement of the witness whose presence could not be procured.

28. Rule 16(3) is almost akin to Sections 32 and 33 of the Evidence Act. Before the Rule can be invoked, the factors enumerated therein, namely, that the presence of the witness cannot be procured without undue delay, inconvenience or expense, have to be found to be existing as they constitute the “condition precedent” for the exercise of jurisdiction for this purpose. In the absence of these factors, the jurisdiction under Rule 16(3) cannot be exercised.

29. Rajpal Singh and Radhey Shyam who were the original complainants along with Shiv Kumar, were not examined and the enquiry officer, regarding their absence, has stated in his report as under:

“The two prosecution witnesses, Rajpal Singh and Radhey Shyam have not attended the proceeding. They have not been found residing in their village now and it had come to notice that the defaulter has managed their disappearance and has



settled them somewhere in Devli Khanpur and also has arranged their employment but the addresses of those PWs are not known. Such is the act of the defaulter to create his defence and is an attempt to hide his misconduct, though their complaint, Ex. PW-1/A has been exhibited and has been taken on file to ascertain the facts and for natural justice.”

30. This will show that the blame for the non-availability of these two witnesses has been laid on the appellant who was already under suspension and it is not understandable as to how and on what basis or on what material the enquiry officer came to the conclusion that the appellant was responsible for their disappearance or had procured employment for them in Devli Khanpur. If it was known to the enquiry officer that they were available in Devli Khanpur, was any attempt made to contact them at Devli Khanpur or to bring them to the enquiry proceedings from that place, is not indicated by the enquiry officer in his report making it obvious that the factors necessary for the exercise of jurisdiction under Rule 16(3) were not present and it was not open to the enquiry officer to have



taken recourse to this Rule to bring on record the previous statement of the complainants which allegedly was recorded by Inspector D.D. Sharma. Moreover, the so-called previous statement itself of the complainants appears to be a highly suspicious document for the reason that SHO D.D. Sharma had stated before the enquiry officer that he had received a complaint of Radhey Shyam, Rajpal Singh and Shiv Kumar whereupon all the three persons were summoned by him and after verifying the facts from those complainants, had recorded their statement which he had dictated to ASI Jagdish Prasad. There were, therefore, two documents:

- (i) The original complaint made by the aforesaid three persons.
- (ii) The statement of these persons recorded by ASI Jagdish Prasad at the dictation of SHO D.D. Sharma, after verifying the facts set out in the complaint from these persons.

31. The original complaint was not placed on the record and it was the statement, recorded by SHO D.D. Sharma, which was produced before the enquiry officer. The absence of the original complaint,



therefore, indicates that there was, in fact, no complaint in existence which further supports the statement of the Department own witness, Smt Meena Mishra that no payment was made by her on 22-2-1990.

32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means “hearing” in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

39. From the findings recorded separately



by the Deputy Commissioner of Police, it would appear that there is a voucher indicating payment of Rs 1000 to Rajpal Singh, one of the labourers, on 8-2-1990. This document was not mentioned in the charge-sheet in which only two documents were proposed to be relied upon against the appellant, namely, copy of the report of SHO Lajpat Nagar dated 5-3-1990 against the appellant and the copy of the labourers statement. This document has, therefore, to be excluded from consideration as it could not have been relied upon or even referred to by the Deputy Commissioner of Police. Moreover, according to the charge framed against the appellant, payment was made on 22-2-1990 and not on 8-2-1990 as indicated in the voucher and, therefore, the voucher for this reason also has to be excluded.”

11. In this connection, it would also be relevant to refer to the judgment rendered by the Hon’ble Apex Court in the case of State of **U.P. vs. Saroj Kumar Sinha, reported in (2010) 2 SCC 772**, paragraphs no. 26 to 30, 37, 39 whereof, are being reproduced herein below :-

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the



appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under:

"(x) Where the charged Government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date, the Inquiry Officer shall proceed with the inquiry ex parte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge- sheet in absence of the charged Government servant."

27. A bare perusal of the aforesaid sub-Rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the enquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the enquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross



examination of the witnesses. But nonetheless in order to establish the charges the department is required to produce the necessary evidence before the enquiry officer. This is so as to avoid the charge that the enquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of



natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non- disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a



plausible and effective rebuttal to the charges being enquired into against the government servant.

39. The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in *State of Punjab v. Bhagat Ram* [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)

“6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.



7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the



action proposed to be taken.”

12. Thus, this Court finds that during the course of inquiry being conducted by the Inquiry Officer, not even a single witness was examined by the prosecution and that is why, as far as inquiry report dated 16.01.2017 is concerned, the Inquiry Officer has clearly come to a finding therein that from the materials available on record, it is not possible to record any opinion, however on account of coercion, threat, intimidation and illegal act being resorted to by the Director (Primary Education) Education Department, Government of Bihar, Patna, as is apparent from his letter dated 16.10.2017, written to the Inquiry officer, the Inquiry officer had furnished an eight line inquiry report dated 24.10.2017, finding the charges no. 1 to 3 to have been proved, however without either any discussion about the materials found against the petitioner herein during the course of inquiry or any whisper about any evidence being available against the petitioner or any reason in support thereof, hence apparently, on the very face of it, the inquiry report dated 24.10.2017 is non-est in the eyes of law, void and stands vitiated, hence is quashed. Apparently, the impugned order of punishment dated 18.05.2018 rests on no



evidence since the same is based on a perfunctory and a non-est inquiry report, which has already been quashed, hence considering the law laid down by the Hon'ble Apex Court in the case of **Roop Singh Negi (supra)**, **Saroj Kumar Sinha (supra)** and **Kuldeep Singh (supra)**, this Court finds that the impugned order of punishment dated 18.05.2018, passed by the Director (Primary Education), Education Department, Government of Bihar, Patna is contrary to the well settled principles of Law, as such not sustainable in the eyes of Law, thus is set aside. Since the views expressed by the disciplinary authority in its order of punishment dated 18.05.2018 has been mechanically endorsed by the appellate authority and the order of punishment dated 18.05.2018 has already been quashed hereinabove, the order dated 20.02.2020, passed by the appellate authority i.e the Additional Chief Secretary, Education Department (Primary Education Directorate) Government of Bihar, Patna, rejecting the appeal of the petitioner, has got no legs to stand, hence is also quashed.

13. Now coming to the issue of back wages, this Court finds that since the entire disciplinary proceedings have been attended with malafide and since the actions of the disciplinary authority reek of a design to somehow inflict



punishment of dismissal upon the petitioner herein, this Court deems it fit and proper to grant 100% back wages to the petitioner herein along with all other consequential benefits, as admissible to the petitioner herein, in view of the law laid down by the Hon'ble Apex Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & Ors. reported in **(2013) 10 SCC 324**, paragraphs No. 38 to 38.7 whereof are reproduced herein below:-

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated



and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial



Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages.

However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely



because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order



of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees.

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three- Judge Benches 7,8 referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

14. Thus, in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. It is also a trite law that onus lies on the employer to specifically plead and prove that the employee was gainfully



employed, which the respondents in the present case have failed to do so. Another factor to be considered is that in case the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court concerned will be fully justified in directing payment of full back wages. I find that the present case is a case of gross injustice meted out to the petitioner herein by the respondents and the materials on record sufficiently demonstrates that the principles of natural justice has been given a go by and the petitioner has been victimized, as such I am of the view that as a consequence of quashing of the enquiry report dated 24.10.2017, the order of punishment dated 18.05.2018 and the appellate Order dated 20.02.2020, the petitioner is entitled for full back wages along with all other admissible consequential benefits.

15. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

