

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10468 of 2020

MADAN PRASAD ROY Son of Late Ram Bahadur Prasad Roy Resident of
Ward No. 1, Sonvarsha Tola, P.O.- Mathurapur, P.S.- Khagaria Sadar, District-
Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. THE PRINCIPAL SECRETARY, Department of Education, Govt. of Bihar, Patna
3. The Director, Secondary Education, Government of Bihar, Patna
4. The Deputy Director, Secondary Education, Department of Education, Government of Bihar, Patna
5. The Regional Deputy Director of Education (RDDE) Munger Division, Munger
6. The District Education Officer, Khagaria, District- Khagaria
7. The District Programme Officer, Munger, District- Munger

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s : Ms. Binita Singh, Standing Counsel-28

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 08-10-2021

1. The present writ petition has been filed for quashing the order dated 28.02.2020 passed by the Director, Secondary Education, Department of Education, Government of Bihar, Patna, whereby and whereunder punishment has been inflicted upon the petitioner and he has been reverted to the lowest time scale salary with effect from the date of issuance of the order. The petitioner has further prayed for quashing of the appellate order dated 01.09.2020, passed by the Additional Chief Secretary-cum-Appellate Authority, Department of Education, Government of Bihar, Patna, whereby and whereunder the appeal preferred by the petitioner has been dismissed. The petitioner has also prayed for quashing of the enquiry report



dated 29.11.2019 as also for directing the respondents to pay his salary from August, 2019 to February, 2020 i.e. for the period of suspension, for which the petitioner has not even been paid the subsistence allowance.

2. The brief facts of the case according to the petitioner are that one Priyaranjan Kumar (Assistant Teacher), Project Girls High School, Dumariya Bujurg, Khagaria, was transferred by the Regional Deputy Director of Education, Munger on 29.06.2018 to the school where the petitioner was posted as In-Charge Headmaster. The said transfer order was illegal inasmuch as the same was issued without verifying the sanctioned strength of the petitioner's school i.e. Shovani Chandpura, Inter School, Jalkoidha, Khagaria. The petitioner had then approached the Director, Secondary Education, seeking guidance regarding accommodating and adjusting the aforesaid Priyaranjan Kumar inasmuch as the said incumbent had been transferred vide transfer order dated 29.06.2018, beyond the sanctioned strength of the school, however, the Director, Secondary Education, considered the said act of the petitioner of directly communicating with him to be an indication of indiscipline, hence a show cause notice dated 26.10.2018 was issued to the petitioner. The petitioner had then offered an



apology, however, subsequently the petitioner was put under suspension vide order dated 22.08.2019 and on the same day a charge sheet was also issued to the petitioner alleging therein that the petitioner had accepted the joining of one Priyaranjan Kumar on 07.07.2018 and only on 04.09.2018, he had sought guidance from the Director, Secondary Education regarding adjustment of Priyaranjan Kumar, after making payment of salary to him, hence the petitioner had engaged in misconduct. It was also alleged that though there was no vacant post of Assistant Teacher in the school in question, the petitioner had not only adjusted the said Priyaranjan Kumar but had also helped him by illegally releasing his salary and only after a long time, vide letter dated 04.09.2018, the petitioner had informed about non-availability of vacant post of teacher in the said school as also had sought guidance as to on what post the said Priyaranjan Kumar should be adjusted, thus the same shows carelessness and arbitrariness on the part of the petitioner as also amounts to the petitioner having engaged in financial irregularity. The petitioner had then submitted his reply dated 14.10.2019 stating therein that he had only complied with the order dated 29.06.2018, passed by the Regional Deputy Director of Education, Munger, made pursuant to the recommendation of



the Divisional Establishment Committee and moreover, since it was clearly mentioned in the said transfer order that the transfer was being made against a vacant post, the petitioner had no occasion to doubt the correctness of the said order dated 29.06.2018, however, only when the petitioner had visited the office of Regional Deputy Director of Education, Munger and obtained a list of the sanctioned posts of the schools of the District, he came to know about the sanctioned strength of his school and regarding non-availability of vacant post for accommodating the said Priyaranjan Kumar, thus he had sought guidance from the Director, Secondary Education, Government of Bihar, Patna inasmuch as the order of transfer had been issued by the Regional Deputy Director of Education, Munger. It was also stated by the petitioner in his reply that since the said teacher had worked for the month of July and there was direction to make payment of his salary, the petitioner had implemented the order of his superior authorities.

The Enquiry Officer, had then submitted the enquiry report dated 29.11.2019, apparently with a perverse finding to the effect that only when the said Priyaranjan Kumar was made In-Charge, of the school by the District Education Officer, vide memo dated 23.10.2018, the petitioner had raised objection and



sought guidance regarding the said irregularity as also had become active. Nonetheless, the Enquiry Officer had found the charge leveled against the petitioner to have been proved. Thereafter, the disciplinary authority vide letter dated 27.12.2019 had issued a second show cause notice to which the petitioner had submitted his reply and then the Director, Secondary Education, Government of Bihar, Patna, by the impugned order dated 28.02.2020, has inflicted major punishment of reversion to the lowest time scale salary with effect from the date of issuance of the order, upon the petitioner. The petitioner had then filed an appeal, however, the same has also been dismissed by an order dated 01.09.2020 passed by the Additional Chief Secretary, Education Department, Bihar, Patna.

3. The learned counsel for the petitioner has submitted that the finding of the Enquiry Officer is perverse and has travelled beyond the charge inasmuch as the charge was that though the aforesaid Priyaranjan Kumar was transferred on 29.06.2018 and his joining was accepted by the petitioner on 07.07.2018 but he had raised the issue regarding there being no vacant post of Assistant Teacher in the school in question belatedly and had sought guidance from the Director, Secondary Education, Government of Bihar, Patna only on 04.09.2018,



however, the Enquiry Officer has come to a finding that for the first time, the petitioner had become alert and had sought guidance only after the said Priyaranjan Kumar was sought to be made In-Charge of the school by the District Education Officer, Khagaria vide Memo dated 23.10.2018 and the petitioner was directed to hand over the charge. Thus, it is submitted that the finding of the Enquiry Officer is beyond the materials on record. The learned counsel for the petitioner has further submitted that the reply submitted by the petitioner has neither been considered by the Enquiry Officer nor by the disciplinary authority, which is apparent from the enquiry report dated 29.11.2019 and the impugned order of punishment dated 28.02.2020. Lastly, it is submitted that the quantum of punishment imposed upon the petitioner by the impugned order dated 28.02.2020 is disproportionate, hence on this ground as well the order of punishment dated 28.02.2020 is fit to be set aside.

4. Per contra, the learned counsel for the respondent-State has submitted that there is no irregularity in the conduct of the departmental proceeding and this Court is not required to re-appreciate the evidence and sit in appeal over the order of punishment dated 28.02.2020, passed by the disciplinary authority, hence no interference is required, either with the



punishment order dated 28.02.2020 or for that matter with the appellate order dated 01.09.2020.

5. I have heard the learned counsel for the parties and perused the materials on record and I find that no infirmity can be found out as far as the enquiry report dated 29.11.2019 is concerned, inasmuch as the Enquiry Officer has merely come to a finding, which cannot be disputed by the petitioner, to the effect that the aforesaid Priyaranjan Kumar was transferred by an order dated 29.06.2018, whereafter the petitioner had accepted his joining on 07.07.2018 despite the fact that in the school in question, of which the petitioner was In-Charge, Headmaster, there was no vacant post of Assistant Teacher/Teacher, hence it cannot be said that the petitioner had not engaged in negligence/ dereliction in discharge of his duties, apart from the fact that the petitioner had admittedly sought guidance from the authorities belatedly, i.e only after releasing the salary of the said Priyaranjan Kumar. This Court further finds that it would hardly make a difference as to whether the petitioner had sought guidance, regarding the issue in question, either vide his letter dated 04.09.2018 or had become alert, as has been stated in the enquiry report dated 29.11.2019, only on 23.10.2018 when the said Priyaranjan Kumar was sought to be



made In-Charge of the school inasmuch as by that time the petitioner had already erred by not only accepting the joining of the said Priyaranjan Kumar, though there was no vacant post of Teacher/ Assistant Teacher in the school in question, but also releasing salary to him. Thus the argument advanced by the learned counsel for the petitioner to the effect that the finding of the Enquiry Officer is perverse and travels beyond the charge, is misconceived, hence is rejected. Now, coming to the other argument advanced by the learned counsel for the petitioner to the effect that the impugned order dated 28.02.2020 passed by the Director, Secondary Education, Bihar, Patna neither considers the reply of the petitioner nor contains any reason for coming to a decision to inflict major penalty of reversion to the lowest time scale salary as also the punishment is disproportionate to the charges levelled against the petitioner, this Court finds from a bare perusal of the punishment order dated 28.02.2020 that the same does not contain any cogent, clear and succinct reasons in support of the impugned order dated 28.02.2020 as also for arriving at a conclusion to inflict major punishment upon the petitioner, which in any view of the matter is an indispensable component of a decision making process and moreover, the impugned order dated 28.02.2020



does not take into account the reply submitted by the petitioner as also smacks of non-application of mind, hence the impugned order dated 28.02.2020 stands vitiated in the eyes of law.

6. It is a well settled law that a disciplinary authority/an administrative authority, in an order passed by it, is required to record reasons for its decision in a clear and explicit manner so as to indicate that the authority has given due consideration to the various issues involved and the need for recording of reasons is even greater in a case where the order is passed at the original stage. Reference in this connection be had to a judgment reported in **A.I.R. 1990 SC 984 (S.N. Mukherjee vs. Union of India)**, paragraph nos. 35, 36, 38 and 39 whereof are reproduced herein below:-

“35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These



considerations show that the re- cord- ing of reasons by an administrative au- thority serves a salutary purpose, namely, it excludes chances of arbitrari- ness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative au- thority exercising quasi judicial func- tions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consid- eration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or re- visional authority, if it affirms such an



order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

36. Having considered the rationale for the requirement to record the reasons for the decision of an administrative authority exercising quasi-judicial functions we may now examine the legal basis for imposing this obligation. While considering this aspect the Donoughmore Committee observed that it may well be argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for the decision, be it judicial or quasi-judicial. The committee expressed the opinion that "there are some cases where the refusal to give grounds for a decision may be plainly unfair; and this may be so, even when the decision is final and no further proceedings are open to the disappointed party by way of appeal or otherwise" and that "where further proceedings are open to a disappointed party, it is contrary to natural justice that the silence of the Minister or the Ministerial Tribunal should deprive them of the opportunity." (P 80) Prof.



H.W.R. Wade has also expressed the view that "natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice." (See Wade, Administrative Law, 6th Edn. P. 548). In Siemens Engineering Co. case (Supra) this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process." This decision proceeds on the basis that the two well-known principles of natural justice, namely (i) that no man should be a Judge in his own cause and (ii) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. This view is in consonance with the law laid down by this Court in A.K. Kraipak and Others v. Union of India and Others, [1970] 1 SCR 457, wherein it has been held:



"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (i) no one shall be a Judge in his own cause (nemo debet esse judex propria causa) and (ii) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice." (P. 468-69) A similar trend is discernible in the decisions of English Courts wherein it has been held that natural justice demands that the decision should be based on some evidence of probative value. (See: R. v. Deputy Industrial Injuries Commissioner ex P. Moore, [1965] 1 Q.B. 456; Mahon v. Air New Zealand Ltd., [1984] A.C.



648."

38. *The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action." As pointed out earlier the requirement about re- cording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi- judicial functions the legislature, while conferring the said power, may feel that it would*



not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial func-



tions is required to record the reasons for its decision."

7. Now coming back to the present case, this Court finds that no reason whatsoever has been furnished by the disciplinary authority, while passing the impugned order of punishment dated 28.02.2020, in support of its decision to inflict major penalty upon the petitioner and further the said order, passed by the disciplinary authority, does not either show consideration of the reply of the petitioner or application of mind by the disciplinary authority or any justification for passing the said order dated 28.02.2020, thus the impugned order of punishment dated 28.02.2020 is unsustainable in the eyes of law, hence is quashed.

8. A bare perusal of the penalty inflicted upon the petitioner, by the disciplinary authority vide order dated 28.02.2020 i.e. reversion to the lowest time scale salary, is in the considered opinion of this Court harsh, excessive and disproportionate to the offence alleged, thus requires reconsideration by the disciplinary authority. On this ground as well the impugned order of punishment dated 28.02.2020 is bad in the eyes of law and fit to be set aside.

9. Having regard to the facts and circumstances of the



case as also considering the fact that since the order of punishment dated 28.02.2020 has already stood quashed, the appellate order dated 01.09.2020 has got no legs to stand apart from the fact that the same is perverse, inasmuch as the same does not either consider or deal with the issues raised by the petitioner in the memo of appeal, this Court deems it fit and proper to set aside the appellate order dated 01.09.2020. As a result of quashing of the order of punishment dated 28.02.2020 as also the appellate order dated 01.09.2020, the matter is remanded back to the disciplinary authority to pass an order afresh, taking into account the reply furnished by the petitioner to the second show cause notice, the materials available on record and the observations made herein above in the preceding paragraphs, within a period of six weeks of receipt/production of a copy of this judgment.

10. The writ petition stands allowed to the aforesaid extent.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	10.09.2021
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