

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14592 of 2019

=====

Md. Mazhar Alam, Aged about 58 years, (Male), Son of Abdul Nadim Siddique, Resident of Village- Thikoha Kothi, P.S. Motipur. District- Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. Principal Secretary Education Department. Govt. of Bihar, Patna.
3. Director, Primary Education, Govt. of Bihar, Patna.

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. Dr. Ranjeet Kumar, Adv. with Mr. Yogesh Kumar, Adv.
For the State	:	AC to GA-12

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 06-09-2022

Heard learned counsel for the petitioner and learned
counsel for the state.

2. The petitioner, who was the Block Development Office, posted at Jamui, has been proceeded against departmentally under a charge memo dated 12.08.2016 communicated under letter dated 15.06.2017.

3. The brief background is that the petitioner was arrested allegedly in a trap case while accepting the bribe on Rs. 15,000/-(Fifteen Thousand) from one allegationist, who complained that the petitioner has solicited the bribe for ensuring that his daughter would find place in the *Vidyalay Shiksha Samiti*. The same led to lodging of vigilance PS Case No. 104 of 2015



dated 11-12-2015 (Annexure-1 to the writ petition) and, obviously, the petitioner's arrest in connection therewith. It is the same allegation which forms the basis of the charge memo issued to the petitioner. The inquiry initiated, thus, has culminated into an order of punishment dated 06.12.2017, dismissing the petitioner from his service, as contained in Annexure-4 to the writ petition.

4. The order of dismissal is passed by the Director, Primary Education, under Memo No. 1344. The petitioner, thereafter, has availed the departmental remedy of appeal. Affirming the finding of charges being proved, punishment and consequence of dismissal from his service, the Appeal has been rejected by the Additional Chief Secretary-cum- Principal Secretary, Education Department, under order dated 08.04.2019, bearing Memo No. 393 as contained in Annexure-5 to the writ petition.

5. The petitioner counsel submits that beyond issuance of charge memo, no procedural prescription under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'the CCA Rules, 2005') has been followed. The records make it clear that the Authority has proceeded with a preconceived notion of concluding the proceedings in petitioner's guilt. Presenting Officer has not presented the case on any date



fixed in the case and not a single witness has been examined in support of the charge. Even the allegationist, who is said to have paid the bribe to the petitioner, has not been examined. Placing reliance on the petitioner's implication in the Vigilance Case, the petitioner has been held guilty of the charges.

6. The State has filed a counter affidavit. It is stated that the petitioner was afforded opportunity and after service of charge sheet, the order has been passed in accordance with law in a proceeding conducted against the petitioner.

7. On a consideration of the rival submissions, this Court would find that the departmental proceedings are vitiated for non-compliance with the procedure prescribed for conduct of proceedings and, therefore, lacking in fairness and contrary to the principles of natural justice. After submission of the charge memo, the petitioner has filed a written statement. The specific averment is that the Education Department has issued a notification bearing No. 1318 on 16-09-2013, from which, it is apparent that the petitioner was not competent for ensuring that the allegationist's daughter would find place in the *Vidyalay Shiksha Samiti*. He has also denied having accepted any bribe. In view of the petitioner's specific denial, the respondents were required to bring home the charge in accordance with the procedure prescribed under the



CCA Rules, 2005. Contrary thereto, the Presenting Officer has only sent a written communication stating that he supports the allegation against the petitioner. The communication is dated 29-12-2016. Thereafter, from the records, it is apparent that proceedings were fixed for 16-01-2017, wherein, no enquiry whatsoever, has taken place which is obvious from bare perusal of Annexure- F to the counter affidavit being the proceedings dated 16-01-2017. Apart from noting attendance of the petitioner and the Presenting Officer, it is apparent that nothing has happened on this date. Neither any witness nor evidence has been produced by the Presenting Officer. On this single day, after obtaining the attendance of parties, straightway, the enquiry report has been submitted holding the charges to be proved under communication of the same date i.e. 16-01-2017. There is total absence of any prescribed procedural steps taken by the Presenting Officer, any material or evidence in the proceedings, and haste is predominant in the way in which the Enquiry Officer has proceeded. The conclusion of the charges having been proved, are apparently based on the fact that the Enquiry Officer is overwhelmed by the fact of petitioner's implication in the Vigilance Case. Relying only upon petitioner's implication in the Vigilance Case, the Enquiry Officer has submitted a report concluding the petitioner's guilt. The same is



based on no material or witness examined in the course of enquiry. The conclusion, therefore, apparently, are unsustainable in view of the law laid down by the Hon'ble Apex Court in the case of ***State of U.P. & Ors. Vs. Saroj Kumar Sinha*** reported in ***(2010) 2 SCC 772*** as well as in case ***Roop Singh Negi Vs. Punjab National Bank and Ors.*** reported in ***(2009) 2 SCC 570***. The conclusions of the Court are to be viewed keeping in background the provisions contained in Rule 17 of the CCA Rules, 2005. Rule 17(14) of the CCA Rules reads as follows:-

“17(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses, as it thinks fit.”

8. Apart from violation of this procedure, this Court would find that the conclusions are also unsustainable in the eyes of law in view of the law laid down in case of ***Roop Singh Negi*** (supra). The order of punishment based on such an enquiry is clearly unsustainable. The order dated 06-12-2017 bearing Memo No. 1344 passed by the Director, Primary Education, as contained



in Annexure-4 to the writ petition, dismissing the petitioner from service, therefore, is quashed. The order of the Appellate Authority, which is nothing more than a mere affirmation of the illegal order dated 06-12-2017, therefore, must also collapse. The order dated 08-04-2019 bearing No. 393 issued by the Additional Chief Secretary-cum- Principal Secretary, Department of Education, as contained in Annexure-5 is also quashed. As a consequence of the quashing of the impugned orders, the petitioner would be entitled to all consequential benefits.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26-09-2022
Transmission Date	N/A

