

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2987 of 2019

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Ajay Kumar S/o Late Bhuneshwar Prasad Singh Resident of Village and Post
office Lamuabad,P.S Pandarak,District Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, New Secretariat,
Government of Bihar, Patna
3. The Director Secondary Education New Secretariat, government of Bihar
Patna
4. The District Magistrate,Patna District Patna
5. The Regional Deputy Director of Education ,Patna Division Patna
6. The District Education officer,Patna District patna
7. The District Programme Officer (Establishment) Patna District Patna
8. The Block Development Officer Pandarak District Patna
9. The Block Education Officer,Mokama District patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Singh
For the Respondent/s : Mr.Jitendra Kumar Roy (Sc 13)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 6 30-11-2023 1. The petitioner was appointed as Peon in Rajkiyakrit
Smt. Sundari Devi Uchha Vidyalaya, Rupas Mahaji,
Bakhtiyarpur, Patna on compassionate ground. At the time of his
appointment the petitioner had submitted a certificate issued by
the Block Development Officer, Pandarak dated: 15.12.2006
stating therein that none of the family members of the petitioner
was employed in government or semi government service / job.
On the basis of the said certificate the petitioner was appointed
on 30.04.2007. A departmental proceeding was initiated against



the petitioner and memo of charge was prepared on 23.06.2017 in which four charges were framed against the petitioner which are reproduced hereinbelow:-

(i) that after the death of late Bhueneshwar Prasad Singh the petitioner has obtained false unemployment certificate and on that basis obtained appointment on compassionate ground

(ii) that one of the sons of the deceased employee late Bhuneshwar Prasad Singh and elder brother of the petitioner is in government service before the date of death of the deceased employee

(iii) that the petitioner concealed the facts and obtained appointment on compassionate ground by committing fraud

(iv) that the petitioner kept the department in dark and has misrepresented in order to get the benefit of compassionate appointment.

2. On the basis of the aforesaid charge a departmental proceeding was conducted and inquiry officer submitted ex-parte inquiry report holding the charges as proved against the petitioner on 06-11-2017. 2nd show cause was asked from the petitioner reply to which was submitted by him on 27.02.2018 and after considering the same order of punishment of removal from service has been passed on 28/05/2018 and appeal preferred by the petitioner was also dismissed by the appellate authority on 13.09.2018.



3. The main contention of the petitioner is that in the departmental proceeding no memo of charge was served upon the petitioner. This fact has been stated in paragraph no. 14 of the writ application. The statement made in paragraph no. 14 of the petition regarding non service of memo of charge has not been denied by the respondents.

4. Learned counsel for the petitioner submits that Section 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 contemplates for delivery of memo of charge upon the delinquent. There is no proof of actual service of memo of charge upon the petitioner and the petitioner has not filed any statement of defence upon the memo of charge. The inquiry officer has wrongly taken into account the show cause asked earlier prior to initiation of departmental proceeding and has submitted the inquiry report. He relies upon a judgment of the Hon'ble Supreme Court reported in AIR 1998 Supreme Court 2722 Union of India and others v. Dinanath Shantaram Karekar and others for the proposition that actual service of memo of charge is necessary since delinquent has to submit his reply upon the charge-sheet and theory of communication cannot be invoked. Accordingly submission is that entire departmental proceeding and the punishment imposed upon the



petitioner is vitiated due to non service of memo of charge upon him.

5. On the other hand learned counsel for the State submits that memo of charge was drawn in the original file which was called by this Court. There is no proof of actual service of memo of charge upon the petitioner. The mode of service of memo of charge is also not mentioned in the file. He next submits that however the petitioner has submitted reply to the 2nd show cause and has not taken the point of non service of memo of charge.

6. I have heard learned counsel for the parties. This court had called for the original records regarding departmental proceeding which has been produced by the State but from the record it does not appear that memo of charge was actually served upon the petitioner. There is no proof of service of memo of charge and the mode of service is also not there in the original file. The Supreme Court has held that theory of communication shall not apply in case of non service of memo of charge and actual service of memo of charge upon the delinquent is essential. The State has also not given reply to the specific statement made by the petitioner in the writ application regarding non service of memo of charge in their counter



affidavit which also proves the memo of charge was not actually served upon the petitioner. The petitioner has submitted that inquiry report is an ex parte inquiry inasmuch the petitioner was not having any knowledge of the date / dates of inquiry proceedings held by the inquiry officer. The state is not in a position to indicate the date wise progress during the course of inquiry.

7. In view of the aforesaid facts and the law laid down by the Supreme Court, I come to the conclusion that memo of charge was not served upon the petitioner as such any order of punishment passed by the disciplinary authority and / or confirmed by the appellate authority cannot sustain in the eye of law.

8. In the result, the present writ application is allowed.

9. The order of punishment 28.05.2018 is set aside and the matter is remitted back to the inquiry officer for initiating inquiry against the petitioner afresh from the stage memo of charge to be served upon the petitioner within a period of one month.

praful/-

(Anil Kumar Sinha, J)

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