

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21801 of 2013

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Basudeo Rai S/O Late Sitaram Rai Resident Of Village - Bishwanathpur, P.S.
Dumra, District - Sitamarhi, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary cum Commissioner, Education Department, Government of Bihar, New Secretariat, Patna.
2. The Regional Deputy Director Of Education, Muzaffarpur, Bihar
3. The Secretary, Home (Special) Department, New Secretariat, Patna
4. The District Magistrate, Sitamarhi, District - Sitamarhi
5. The District Education Officer, Sitamarhi, District - Sitamarhi
6. The District Superintendent Of Education, Sitamarhi, District - Sitamarhi
7. The District Superintendent Of Education, Sitamarhi, District - Sitamarhi

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Avanish Kumar Singh
For the Respondent/s : Mr.Kaushal Kr Jha Aag-14

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 23-01-2023

The writ application has been filed for following reliefs:-

“(a) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 03.08.2006 (Annexue-7) passed by the Regional Deputy Director of Education (hereinafter referred as Respondent-2), whereby and whereunder the said authority has been pleased to dismiss the petitioner from his service in a most arbitrary and fanciful manner, on the ground that the selection of the



petitioner was not in accordance with the law and thus passed a non speaking order.

(b) For issuance of an appropriate writ directing the respondents to regularize the services of the petitioner on the sanctioned post of Office orderly in the office of Respondent No-6, in the light of the order dated 13.07.2004 passed by this Hon'ble Court in C.W.J.C. No. 848 of 2001 (Annexure-4).”

2. Specific case of the petitioner is that without issuance of any show cause notice or affording opportunity of hearing, petitioner has been dismissed from the service by the respondents authorities. It is submitted on behalf of petitioner that the impugned order is non-speaking and does not reflect application of mind. Impugned order is against the statutory rules and in violation of principle of natural justice.

3. Per contra, learned counsel for the State submits that after affording ample opportunity of hearing to the petitioner, vide letter no. 408 dated 12.07.2006 and letter no. 428 dated 19.07.2006, the impugned order has been passed by the respondents authorities.

4. Learned State counsel further submits that no material has been produced by the petitioner to suggest that his appointment on the post of Peon was in accordance with law and



hence, in the said attaining circumstances, the appointment of the petitioner has been cancelled, vide impugned order dated 03.08.2006. Therefore, the writ application is devoid of any merit and petitioner is not entitled for any relief.

5. From bare perusal of the impugned order dated 03.08.2006, it is evident that the impugned order has been passed without considering the show cause reply filed by the petitioner. It does not reflect or contain any discussion about the pleas or grounds, which have been taken by the petitioner in his defence. In terms of Rule 18(3) and (4), the disciplinary authorities are mandatorily required to deal with the defence of the petitioner. Non-compliance of the same has resulted in violation of principle of natural justice.

6. For the above discussion and reasons, indicated above, the impugned order dated 03.08.2006 (Annexure – 7 to the writ application) is, hereby, set-aside and quashed.

7. Since the impugned order of cancellation of appointment of the petitioner, being non-speaking order, is being quashed by this Court on the ground of violation of principle of natural justice, the respondents authorities are at liberty to pass a fresh order in accordance with law after giving proper opportunity



of hearing to the petitioner within a period of three months from the date of receipt / production of copy of this order.

7. With above observation, the writ application stands allowed.

(Prabhat Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.01.2023
Transmission Date	N/A

