

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19594 of 2015

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Rajiv Kumar, S/o Late Chandeshwar Prasad, resident of village-Islampur,
P.S.-Islampur, District-Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education
Department, Govt. of Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. The Regional Deputy Director of Education, Patna Division, Patna
4. The District Education Officer, Nalanda
5. The District Programme officer (Establishment), Nalanda
6. The Enquiry Officer-cum-District Education Officer, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.
For the Respondent/s : Mr. Ajay Behari Sinha, Sr. Adv., GA-8
Mr. Neeraj Raj, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 06-10-2023

The present writ petition has been filed for quashing the order of punishment dated 22.11.2014, passed by the Regional Deputy Director of Education, Patna Division, Patna, i.e. the Respondent No. 3, whereby and whereunder punishment of withholding of two increments with cumulative effect has been inflicted upon the petitioner, apart from it being directed that the petitioner shall neither be posted in any responsible cell relating to financial / establishment work nor at District / Block Headquarter level. The petitioner has also challenged the appellate order dated 31.7.2015, passed by the Director



Secondary Education, Bihar, Patna, i.e. the Respondent No. 2, whereby and whereunder the appeal, filed by the petitioner, has been rejected.

2. The brief facts of the case, according to the petitioner, are that the petitioner is an Assistant Clerk and had been posted at the office of District Education Office, Nalanda, since 9.8.2010. The petitioner was made Incharge for maintaining the receiving register of the office, vide memo dated 24.9.2013 and he is stated to have taken charge from one Sri Umesh Chandra Kumar on 4.10.2013. One Balwant Kumar, Teacher, Primary School, Gauravchak, Ekangar Sarai, had sought information under the Right to Information Act and had demanded photocopy of the receiving register from 8.7.2013 to 31.12.2013, however, prior to getting the same photocopied for being supplied to the aforesaid Balwant Kumar, the predecessor of the petitioner, Sri Umesh Chandra Kumar, had demanded the receiving register for making certain corrections, whereupon the petitioner, in good faith, had handed over the said register, however, upon return, it was detected that page no. 119 of the said register is missing, whereupon the petitioner had brought the said incident in writing to the knowledge of the District Education Officer, Nalanda, on 15.1.2014 itself, leading to the District Programme



Officer (Establishment), Nalanda, requesting the Officer Incharge, Biharsharif P.S. to institute F.I.R. against the said Umesh Chanda Kumar, whereupon, Biharsharif P.S. Case No. 90 of 2014 was registered against the said Umesh Chandra Kumar. Nonetheless, vide office order dated 20.6.2014, a departmental proceeding was initiated against the petitioner by the Respondent No. 3 on the charge of tearing a page of the receiving register and for making entry in the receiving register regarding receipt of enquiry report from the then Block Development Officer, Thathari, on a back date. Thereafter, Enquiry Officer was appointed and memo of charges /Praptra "K" was issued to the petitioner on 20.6.2014 itself. The petitioner had then filed his show cause reply on 2.7.2014, denying all the charges and had also participated in the departmental enquiry. The Enquiry Officer had then submitted his enquiry report dated 27.8.2014, finding the charges to have been proved.

3. The learned counsel for the petitioner has further submitted that without either furnishing / serving a copy of the enquiry report upon the petitioner or issuing any second show cause notice, the impugned order of punishment dated 22.11.2014 has been passed by the Respondent No. 3,



whereafter the petitioner had filed an appeal, however, the same has also stood dismissed, vide order dated 31.7.2015, passed by the Respondent No. 2.

4. The learned counsel for the petitioner has relied on a judgment, rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors. vs. Md. Ramzan Khan***, reported in AIR 1991 (SC) 471, as also upon a judgment, rendered by the Hon'ble Apex Court in the case of ***Managing Director, ECIL, Hyderabad and Others vs. B. Karunakar & Others***, reported in (1993) 4 SCC 727, wherein it has been held that non-serving / non-furnishing of enquiry report upon the delinquent employee prior to passing of the order of punishment would amount to violation of the principles of natural justice, hence, the order of punishment would be rendered void. The learned counsel for the petitioner has also relied on a judgment, rendered by the learned Division Bench of this Court in the case of ***Dinesh Prasad vs. State of Bihar & Ors.***, reported in 2006 (4) PLJR 514.

5. On the contrary, though the learned Senior Counsel for the Respondent-State has not been able to defend the aforesaid irregularity in the procedure adopted by the disciplinary authority, leading to passing of the impugned order of punishment dated 22.11.2014, however, he states that the order



of punishment may be quashed, but the matter be remanded back with liberty to proceed with the enquiry from the stage of furnishing the enquiry report.

6. Having regard to the aforesaid facts and circumstances of the case, this Court finds that admittedly, before passing the order of punishment dated 22.11.2014, neither the enquiry report was furnished to the petitioner nor he was granted an opportunity to make representation to the disciplinary authority against the findings, recorded in the enquiry report, prior to passing of the order of punishment, resulting in breach of the principles of natural justice, consequently the order of punishment dated 22.11.2014, passed by the Respondent No. 3, as also the appellate order dated 31.7.2015, passed by the Respondent No. 2, cannot be sustained in the eyes of law, hence, are quashed. Nonetheless, liberty is granted to the Respondents to act in accordance with the law laid down by the Hon'ble Apex Court in the case of *B. Karunakar & Others* (supra).

7. The writ petition stands allowed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
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