

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14842 of 2017

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Rajendra Nath Mishra Resident of Village P.O.- Dhani Bazar, District-
Maharajganj, State- Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Secondary Education, Education Department, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
4. The Joint Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
5. The Regional Deputy Director of Education-cum-Enquiry Officer, Tirhut Division, Muzaffarpur.
6. The District Education Officer-cum-Presenting Officer, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate Mr. Ravi Bhushan Bharat, Advocate Mr. Navin Kumar, Advocate Mr. Arun Kumar, Advocate
For the Respondent/s	:	Mr. Madhav Prasad Yadaw, GP-23 Mr. Sanjay Kumar, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 25-09-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. Petitioner in the present case has prayed for
following reliefs:-

“a. For issuance of an appropriate writ in the
nature of certiorari quashing the order as
contained in Memo No. 855 dated 07.04.2017
issued under the signature of the Director
(Secondary Education), Govt. of Bihar, Patna
whereby and where under, even without framing



a Memorandum of Charge in accordance with the relevant provisions of Bihar Government Servant (Classification, Control and Appeal) Rules 2005, and without holding a Regular Departmental Proceeding against the Petitioner, and in absence of any definite finding of fact at the level of the Department (either by the disciplinary authority or by the enquiry officer) as regards the fact that the Petitioner has committed any of the alleged act, the order of dismissal from service of the Petitioner has been passed.

b. For issuance of an appropriate writ in the nature of certiorari quashing the order as contained in Memo No. 1702 dated 13th of July 2017 passed by the Principal Secretary, Education Department, Bihar, Patna by which the Appeal preferred by the Petitioner against the order as contained in Annexure-1 has been rejected and the order passed by the Director, Secondary Education, Bihar, Patna dismissing the Petitioner from Service has been upheld.

c. For issuance of an appropriate writ holding and declaring the action of the respondents in issuance of memo of charge vide Memo No. 162 dated 15th of January 2009 without any annexing/providing therewith any evidence, renders the memo of charge violative of Rule 17(3) read with 17(6) of Bihar Government Servant (Classification, Control and Appeal) Rules 2005, thus void ab-initio, and is fit to be set aside by this Hon'ble Court.

d. For issuance of an appropriate Writ holding and declaring the action of the respondents in rejecting the earlier enquiry report dated 24th of May 2013, submitted by the then enquiry officer and his further action directing for submitting a fresh enquiry report, that too without intimating the Petitioner tantamounts to violative of



principles of natural Justice and renders the subsequent enquiry report dated 14.11.2014 nullity in the eye of law, and vitiates the entire Departmental Proceeding, as being violative of articles 311(2) of the constitution of India as well as the relevant provisions of Bihar Government Servant (Classification, Control and Appeal) Rules 2005, which specifically provides for holding a Regular Departmental Proceeding against the concerned permanent employee, before major punishment is inflicted upon such officer/employee.

e. For issuance of an appropriate Writ in the nature of Mandamus directing the Respondents to immediately reinstate the Petitioner into service with all consequential benefits.”

3. Learned counsel for the petitioner submits that the petitioner was dismissed from service vide impugned order as contained in Memo No. 855 dated 07.04.2017 (Annexure ‘1’) issued by the Director (Secondary Education) Bihar, Patna. An appeal preferred by him before the Principal Secretary, Department of Education, Government of Bihar was also dismissed vide Memo No. 1702 dated 13.07.2017 (Annexure ‘2’).

4. Learned counsel submits that this petitioner along with two others, namely, Dharm Nath Mishra and Chandan Kumar were subjected to a departmental proceeding on the allegation that they were involved in selling forged certificates,



marksheet, etc. for which Vigilance P.S. Case No. 093 of 2008 dated 16.11.2008 was registered under Sections 420, 466, 467, 468, 471, 474, 109, 167 and 120(B) of the Indian Penal Code read with Sections 7, 8, 13(2) read with Sections 13(1)(c)(d) of the Prevention of Corruption Act, 1988. It is stated that the said inquiry report was entrusted to the Regional Deputy Director (RDD) who submitted a report as contained in Annexure '6' to the writ application. The Inquiry Officer exonerated the petitioner and others. As regards charge no.3, he opined that it is not possible to hold the petitioner guilty of the charge no.3 at this stage. When the said report was submitted by the Inquiry Officer to the Director, Secondary Education, Government of Bihar, it was clear opinion of the Inquiry Officer that there was no evidence with regard to the charges. The disciplinary authority, however, constituted second inquiry into the matter and this time all the charges were taken as proved. It is pointed out that from bare perusal of the second inquiry report (Annexure '10' to the writ application) it would appear that the department had not led any evidence to prove the charges and the Inquiry Officer only agreed with the prima-facie view of the Presenting Officer. No evidence at all had been referred in the inquiry.



5. It is submitted that even though a copy of the inquiry report was made available with an opportunity to show cause and the petitioner submitted his show cause but the same was not considered and the impugned order was passed in a routine and mechanical manner. This Court has been informed that in the case of Dharm Nath Mishra and Chandan Kumar who were also chargesheeted and proceeded against in the same manner simultaneously, this Court in CWJC No. 15140 of 2017 and in CWJC No. 14988 of 2017 has considered all these aspects of the matter and finally quashed the impugned orders and a direction was issued to the respondents to pay all the consequential benefits of the petitioner. The case of the present petitioner would be squarely covered by the findings and the observations of the learned writ court in the aforesaid two writ applications. The order of the learned writ court is said to have attained finality and those two petitioners have already been paid.

6. Learned counsel for the State is present and has though opposed this application, it is not disputed that the two petitioners who moved this Court in CWJC No. 15140 of 2017 and in CWJC No. 14988 of 2017 were identically situated with the present petitioner. No distinction has been drawn before this



Court between the case of those two petitioners and the present case.

7. In the given facts and circumstances of the case as also the materials placed before this Court and the two orders of this Court in case of similarly situated persons, this Court is of the considered opinion that the impugned orders as contained in Annexures '1' and '2' are in the nature of an order passed in a routine and mechanical manner. The learned writ court in the case of Dharm Nath Mishra (supra) has held in paragraph nos. 12, 13, 14 and 15 as under:-

“12) Admitted the second enquiry report is based on the same material and as such it is unsustainable as the second enquiry report by the Regional Deputy Director is not based on appreciation of new materials, the report is more in the nature of opinion which is not sustainable in the eye of law.

13) From the material available on record, the Court is of the view that departmental enquiry was only a formality as no witness was examined to prove the charges and no evidence documentary or oral was produced in the enquiry. Only on the basis of F.I.R. lodged by vigilance, the petitioner was held out guilty of all the charges by the enquiry officer. It is reiterated here that the enquiry officer earlier on the same material exonerated the petitioner and thereafter on the same material he came to the conclusion that the petitioner is guilty of the charges. Based on such enquiry report, the respondents have proceeded and inflicted punishment of forfeiture of 100% pension of the petitioner. The forfeiture of 100% pension of a retired employee is like capital punishment and such order is unsustainable if the procedure was not followed in the process of decision making.

14) Considering the totality of the fact, the Court is of the considered view that the order contained



in Annexure 11 passed by the Director, Secondary Education, and the order passed by the Secretary, Education Department, contained in Annexure 12 are unsustainable.

15) With the aforesaid, the present writ application is disposed of with a direction to the respondents to pay all the consequential benefits to the petitioner.”

8. The case of the petitioner being squarely covered by the aforesaid judgment of this Court, this Court sets aside the impugned orders and directs the respondents to pay the petitioner all the consequential benefits as have been paid to Dharm Nath Mishra and Chandan Kumar.

9. Let the consequential benefits be paid within a period of three months from the date of receipt/production of a copy of this order.

10 .The writ application is allowed.

(Rajeev Ranjan Prasad, J)

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