

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3042 of 2018

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Rameshwar Paswan Son of Late Yogendra Paswan, Resident of Mohalla-
Magadh Colony Kurjee, Police Station- Digha, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar,
Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer, Establishment, Patna.
7. The District Programme Officer, Mid Day Meal, Patna.
8. The District Education Extension Officer, Bihta.
9. The Block Education Extension Officer, Phulwarisharif.
10. The Secretary, School Education Committee, Upgraded Middle School,
Dhanwa, Barh, Patna.
11. The Headmaster, Upgraded Middle School, Dhanawa, Barh, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms.Mahasweta Chatterjee
For the Respondent/s	:	Mr.M. Pd. Yadaw, GP 23
		Mr. Arvind Kumar, AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 29-05-2023

The petitioner, who was appointed as Assistant teacher and posted in Primary School, Dhanawa, at the relevant point of time on 01.09.2009 and was serving as Incharge Headmaster of the said School and also had the responsibility of mid-day meal, has filed the present writ application for quashing the order of



punishment, as contained in memo no. 4512, dated 12.06.2017 (Annexure 18), by which three increments of the petitioner with cumulative effect has been withheld with further punishment of non-payment of any amount during the period of suspension, except the subsistence allowance and also to realize the defalcated amount from the petitioner.

2. Consequential prayer is for quashing memo no. 1492, dated 04.12.2017, (Annexure 19) by which the Appellate Authority has dismissed the departmental appeal filed by the petitioner.

3. During the pendency of this writ application, a sum of Rs. 1,17,384, towards the defalcated amount has been recovered from the monthly salary of the petitioner, starting from June, 2022, which the petitioner has challenged by way of filing I. A. No. 01 of 2022. The petitioner has also prayed for refund of the said amount.

4. Considering the nature of prayer made in I. A. No. 01 of 2022, the same is allowed and the prayer made in the interlocutory application is made part of this writ application.

5. The brief facts, giving rise to the present writ application, is that the petitioner was appointed as an Assistant Teacher on 02.03.2000 and was posted in the Primary School, Dhanawa, where he joined on 01.09.2001, after completion of training.



6. Since the petitioner was the sole teacher in the school, he was also discharging the duties of the Headmaster of that school and was responsible for providing mid-day meal as well.

7. As per Section 3 of the Bihar State School Education Committee Act, 2000, there is a School Education Committee for supervising the function of the Government Primary School, which should arrange for the mid-day meal and take necessary steps for providing food grains and distribution of food and supervision thereof. Prior to withdrawal of any amount for the purchase of food grains and the expenditure, the same is to placed before the School Education Committee for its approval and sanction.

8. According to the petitioner, he used to submit the monthly report of the expenditure, giving the details of the number of students and the expenditure incurred in the mid-day meal to the Block Resource Person as well as the School Education Committee for the relevant period, i.e. from 2005 to 2007 (during which he was in-charge), and the same was duly approved by the School Education Committee.



9. The petitioner was transferred from Primary School, Dhanawa, to Hinduni Primary School, Phulwarisharif, where he joined on 18.07.2007 and handed over his charge to his successor, namely, Umesh Kumar, on 11.07.2007. The documents and amount spent on mid-day meal (Vouchers and cash books) were also handed over to the said successor of the petitioner, Umesh Kumar, along with the mid-day meal register.

10. The petitioner received letter no.104, dated 25.01.2016, issued by the respondent no. 7- the District Programme Officer (Mid-day Meal), informing that a complaint has been filed by one Smt. Sheorati Devi with regard to the irregularities committed during the distribution of mid-day meal and the petitioner was directed to appear before him with all the relevant original documents. Apart from the petitioner, three other persons were also directed to appear and all the four persons appeared before the District Programme Officer (Mid-Day Meal) on 09.02.2016, and filed their show cause.

11. The District Programme Officer (Mid-Day Meal) directed the petitioner to submit the document of withdrawal of the amount and its utility certificate along with all documents within a week, and in pursuance thereof, the petitioner, by letter, dated 13.05.2016, communicated to the District Programme Officer



(Mid-Day Meal) that he has already handed over all the documents to his successor, Umesh Kumar, who, in turn, handed over the documents to his successor, Smt. Rekha Kumari, on 09.02.2016.

12. The District Programme Officer (Establishment) issued an Office Order, vide Memo No. 2841, dated 11.04.2016, by which the petitioner was placed under suspension and a departmental proceeding was initiated against him, for which the memo of charge, in Form-“Ka”, dated 09.04.2016 was also served with the said letter, dated 11.4.2016, and the Block Education Officer, Bihta, was appointed as the Enquiry Officer and the Block Education Officer, Phulwarisharif, was appointed as the Presenting Officer

13. The petitioner appeared before the Enquiry Officer on 30.07.2016 and filed a show cause, and thereafter the next date of enquiry was fixed on 20.09.2016 and after that there was no communication to the petitioner regarding the proceedings of the enquiry and suddenly the petitioner received a second show-cause, vide letter no. 8585, dated 27.12.2016, issued by the District Programme Officer (Establishment) (Annexure 14) along with a copy of the enquiry report (Annexure 15). The petitioner filed his reply to the second show cause on 03.04.2017 and the order of punishment was passed on 12.06.2017.



14. Aggrieved by the order of punishment, the petitioner preferred an appeal before the Regional Deputy Director of Education, Patna, who dismissed the same by order, issued under memo no.1492, dated 04.12.2017, affirming the order passed by the District Programme Officer (Establishment).

15. A counter affidavit has been filed by the respondents stating therein that the District Programme Officer (Mid-day Meal) received a complaint against the petitioner and after giving opportunity to file show cause, the petitioner was suspended and a departmental proceeding was initiated against him and, accordingly, a decision was taken to serve memo of charge upon the petitioner and, accordingly, the memo of charge, dated 09.04.2016, was served upon the petitioner.

16. The Enquiry Officer submitted the enquiry report on 10.12.2016, wherein charge nos. 2 and 3, out of the three charges, were found to be proved. The second show cause notice was issued to the petitioner, to which he replied, but failed to rebut the findings of the Enquiry Officer, specially forged and false claim regarding register. On the basis of proved charges arrived at by the Enquiry Officer, the orders of punishment, dated 12.06.2017 and 20.06.2017, were passed and the departmental proceeding against the petitioner was concluded.



17. Learned Counsel for the petitioner, while assailing the impugned orders, argued that along with the memo of charges, list of documents and witnesses upon each article of charge, which is proposed to be proved/sustained, were not provided to the petitioner, as would be evident on the face of it from the memo of charges itself served upon the petitioner in Form “Ka,” which is an utter violation of Rule 17 (3) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (in short, “CCA Rules, 2005”). She also submits that the charges are stale and after nine years of the alleged misconduct/defalcation, which took place in the year 2007, the memo of charges was served upon the petitioner in the year 2016.

18. Learned Counsel further submits that the date of enquiry was fixed on 30.07.2016, and on that date, the petitioner appeared before the Enquiry Officer and filed his show cause. The next date was fixed on 20.09.2016 and thereafter no further date was fixed by the Enquiry Officer and no communication in this regard was given to the petitioner. Suddenly the petitioner received the second show cause and copy of the enquiry report on 27.12.2016. The Presenting Officer neither examined any witness nor produced any document to substantiate the charges levelled against the petitioner. Sub-Rule 14 of Rule 17 of CCA Rules,



2005, prescribed that 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 the Presenting Officer, which may be cross-examined by the delinquent, the Presenting Officer shall be entitled to re-examine the witnesses, but none of the procedures as mandatorily prescribed under the CCA Rules, 2005, has been followed by the Enquiry officer, which would be evident from the copy of the order sheet, annexed at Annexure 23 to the supplementary affidavit filed by the petitioner.

19. Learned Counsel for the petitioner further submits that from perusal of the enquiry report, it would be evident that the Enquiry Officer collected evidence behind the back of the petitioner. It is well settled that any punishment imposed relying on materials collected outside the enquiry without examining witnesses in the enquiry to prove the charges by producing documentary and oral evidence in support of charges, vitiates the entire departmental enquiry and any punishment imposed on the basis of that vitiated enquiry is nullity and cannot sustain. No oral enquiry was held by the Enquiry officer on the two dates which were fixed for holding enquiry, inasmuch as neither any witness



was examined nor any document was produced by the Presenting Officer and proved by examining witnesses on the documents collected and/or statement of the witnesses recorded during the course of enquiry.

20. Learned Counsel next submits that in reply filed by the petitioner to the second show cause, he has contended that the petitioner was not given proper opportunity by the Enquiry officer during the course of departmental enquiry, no witness was examined, so that he could cross-examine the witness produced by the department, the enquiry was held on two dates only, i.e., on 30.07.2016 and 20.09.2016, and based upon the perfunctory enquiry, the Enquiry officer submitted his report holding the petitioner guilty of two charges, out of three, levelled against him.

21. In support of her argument, learned Counsel for the petitioner placed reliance on the decisions of this Court, in the cases of **Arjun Mishra v. Bihar School Exmination Board**, reported in **2007 (3) PLJR 700** and **Choudhary Murli Manohar Prasad Roy v. the State of Bihar**, reported in **2008 (4) PLJR 315**.

22. Per contra, learned Counsel for the State argued that the departmental proceeding was conducted in accordance with the procedure prescribed under the law. Memo of



charges were served, the Enquiry Officer called the petitioner in the enquiry, the petitioner participated in the enquiry proceeding and the copy of the enquiry report, along with the second show cause, was also served upon him. The Enquiry Officer submitted a detailed enquiry report holding the charges proved and the petitioner never requested the enquiry officer to cross-examine any witness and, as such, the order of punishment does not suffer from any infirmity or illegality.

23. I have heard learned counsel for the parties and perused the materials on record.

24. From perusal of memo of charge, at Annexure 11, it is clear that the list of documents and the list of witnesses by which the articles of charges are proposed to be proved/sustained, were not provided to the petitioner along with the memo of charges.

25. Altogether three charges were levelled against the petitioner, which are as follows:

(i) charge no. 1 is that the petitioner did not hand over charge of mid-day meal for the period 2005-07 while working as the Incharge Headmaster of the Primary School, Dhanawa,

(ii) charge no. 2 is defalcation of food grains meant for mid-day meal and its amount; and



(iii) charge no. 3 is misuse of official position in order to get undue advantage/benefit. Charge no. 1 was not proved and charge nos. 2 and 3 were proved against the petitioner.

26. Upon perusal of the enquiry report, it appears that the same does not indicate as to who were the witnesses who were examined during the course of departmental proceeding in order to substantiate the charges levelled against the petitioner and which documents were produced by the Presenting Officer during the course of enquiry in order to prove the charges.

27. On perusal of the order sheet of the departmental proceeding annexed with the supplementary affidavit, I find that the contention of the petitioner is correct that the enquiry was not conducted as per the established procedure and in two dates, the enquiry was closed and was conducted in perfunctory manner. I do not find in the orders recorded by the Enquiry Officer that any document was produced before the Enquiry Officer and was proved during the course of enquiry. I also did not find that any oral enquiry was conducted and any witness was examined in order to substantiate the charges levelled against the petitioner giving opportunity to him to cross-examine the witnesses produced by the department.



28. From perusal of the enquiry report, it also appears that the Enquiry Officer, on two occasions, and lastly on 04.12.2016, conducted spot verification, received the written complaint from the then Chairman and Secretary of the School Education Committee, in which they have stated that their signatures upon the mid-day meal register are forged and accordingly the Enquiry Officer has come to the conclusion that the charge nos. 2 and 3 stands proved against the petitioner-delinquent.

29. From the record, it does not appear that the written complaint collected by the Enquiry Officer, during the spot verification of the school, from the Chairman and Secretary of the School Education Committee, was ever served/furnished to the petitioner during the course of enquiry.

30. The reliance upon the complaint by the Enquiry Officer collected during the course of spot verification behind the back of the petitioner-delinquent and without confronting the petitioner with the evidence collected by the Enquiry officer outside the enquiry proceeding, is gross infringement of procedure for conducting domestic enquiry.

31. The role and duty of the Enquiry Officer is in the nature of quasi judicial authority and he is in the position of an



independent adjudicator. The Enquiry Officer is not suppose to be an agent/representative of the department and/or disciplinary authority and his duty is to examine the evidence presented by the department through the Presenting Officer to see as to whether the evidence produced is sufficient to hold the charges proved. It cannot lose sight of that though the Presenting Officer was appointed, but he did not lead any evidence, neither oral nor documentary, on the charges/allegation, on the contrary, the Enquiry Officer assumed the role of the presenting Officer, conducted the spot verification of the school, in question, and in the process, collected the evidence behind the back of the petitioner-delinquent outside the enquiry, which, in my opinion, is in complete violation of the principles of natural justice and duty cast upon the Enquiry officer under the law, which he failed to discharge as an Enquiry officer.

32. The Supreme Court, in the case of **Anil Kumar v. Presiding Officer (AIR 1985 SC 1121)**, has held that an enquiry report with regard to a departmental enquiry conducted by the Enquiry Officer should not be based on the *ipse dixit* of the Enquiry Officer. It should show as to what are the charges levelled against the petitioner, how the departmental enquiry was conducted, what was the evidence that came on record, it should



show analysis of the evidence and conclusion of the Enquiry Officer based on reason to show that the evidence that came before the Enquiry Officer was analyzed in the backdrop of the explanation submitted by the petitioner and he holds the delinquent employee guilty of the charges levelled against him.

33. If the report of Enquiry Officer does not meet the aforesaid requirement of law, it is a total violation of the principles of natural justice and based upon such enquiry report, no punishment can be imposed upon a delinquent employee.

34. Paragraphs 5 and 6 of **Anil Kumar** (Supra) is quoted herein below:

“5.It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must



show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v. Union of India* [1966] 1 SCR 466 : (AIR 1966 SC 671), this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in *Mahabir Prasad v. State of Uttar Pradesh* [1971] 1 SCR 201: AIR 1970 SC 1302), this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of



natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

35. A Bench of this Court, in the case of **Kumar Upendra Singh Parimar v. The State of Bihar**, reported in **2000 (3) PLJR 10**, in paragraphs 17, 18 and 19, has held as follows:-

“17. The other grounds on which no witnesses have been produced in the said enquiry is that the petitioner has not demanded an oral enquiry.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.



19. Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav v. J.M.A. Industries Ltd., reported in (1993) 3 SCC 259 : 1994 (2) PLJR (SC) 55.”

36. In another decision of this Court, in the case of **S.K. Verma v. The State of Bihar**, reported in **2000(1) PLJR 116**, it has been held, in paragraph 16, as follows:-

“In view of the fact that during the inquiry no witness was examined, this Court holds that the charges against the petitioner cannot be said to have been proved. It is a well known principle that at the stage of inquiry the petitioner is entitled to be given a reasonable opportunity to cross-examine the witnesses who are produced to prove the charges. The petitioner also has a right to adduce evidence by producing witness. It is well known that at this stage provision of the Indian Evidence Act does not apply. But, the substantial principles of Evidence Act are to be observed in a departmental enquiry also.”



37. In yet another decision of this Court, in the case of **Choudhary Murli Monohar Prasad Roy** (supra), this Court has held that the Presiding Officer, relying on materials collected outside the enquiry without examining witnesses in the enquiry to prove those materials, the absence of the documentary evidence in support of the charges and finally the Enquiry Officer himself assuming the role of a witness in the enquiry, are all matters which vitiate the departmental enquiry completely.

38. Coming back to the facts of the present case, I find that the Presenting Officer did not produce any documentary evidence as well as oral evidence to prove the charges by examining witnesses, the Enquiry Officer, in such circumstances, has grossly erred in assuming this role upon himself by conducting spot verification and by collecting documents and recording evidence of witnesses during the course of spot verification.

39. In view of the aforesaid discussion, I come to the conclusion that the enquiry was conducted in gross violation of established procedure and the principles of natural justice. The enquiry report submitted by the Enquiry Officer is based upon the *ipse dixit* holding the charges as proved. As such, in my considered opinion, the enquiry itself has vitiated. The Enquiry Officer has



failed to discharge his duty as an independent adjudicator. Accordingly, the enquiry report stands quashed.

40. The departmental enquiry has also vitiated on the ground that along with the memo of charges, the list of documents and witnesses, by which the article of charges were proposed to be proved/sustain, were not provided to the petitioner, as required under Rule 17 (3) of the CCA Rules, 2005.

41. Since this Court has quashed the enquiry report and memo of charge did not contain any list of documents/evidence, the orders of punishment based upon such invalid enquiry cannot sustain. As memo of charge was served upon the petitioner without any list of documents/evidence, the same is also quashed.

42. In the result, the orders of punishment, dated 12.06.2017 and 20.06.2017, are hereby quashed.

43. Since this Court has quashed the enquiry report, the memo of charges and the orders of punishment, the consequential order of appeal passed by the Appellate Authority is also not sustainable and is hereby quashed.

44. The petitioner is entitled to be paid all consequential benefits, including monetary benefits and refund of the amount of Rs. 1,17,384/-, deducted during the pendency of this writ application. I order accordingly.



45. The respondents if so advised, may hold fresh enquiry in accordance with law in respect of self same charges by serving a fresh memo of charges along with the list of documents and list of evidence to be relied upon by the Department in order to prove/sustain the charges and by providing adequate opportunity to the petitioner during the course of enquiry by producing their own witnesses/documentary evidence, if any, in support of the charges.

46. In the result, this writ application is allowed.

47. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

ashwani/-

AFR/NAFR	AFR
CAV DATE	26-04-2023
Uploading Date	29-05-2023
Transmission Date	N/A

