

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10460 of 2018

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Lalita Kumari Wife of Sri Awadhesh Kumar, resident of Village- Ushri, P.S.-
Taraiya, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Appellate Authority, Education Department, Government of Bihar, Patna.
2. The Secretary-cum-Appellate Authority, Education Department, Government of Bihar, Patna.
3. The Director-cum-Disciplinary Authority, Primary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education - cum - Enquiry Conducting Officer, Purnia Division, Purnea
5. The District Education Officer, Buxer.
6. The District Programme Officer Establishment-cum-Presenting Officer, Buxer.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Mauli Chaurasia, Adv.
For the Respondent/s : Mr. Ram Vinay Prasad Singh, AC to GA-12

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

9 09-01-2023

1. Heard the parties.

2. The petitioner by way of this writ petition assails the order dated 16.12.2016 passed by the respondents, whereby he has been dismissed from service on the basis of a charge sheet issued to the petitioner, whereby it was alleged that she had been found taking bribe and was arrested.

3. Learned counsel for the petitioner submits that the petitioner had been trapped in the vigilance case registered against her on 18.09.2014. With regard to the same allegations,



charge sheet was served upon the petitioner under Rule-17 of the C.C.A. Rules of 2005 on 14.10.2014, while under suspension. However, the procedure laid down under rules 17 of the C.C.A Rules was not followed and the prosecution did not present its case nor produced any evidence during the course of enquiry and without there being any document proved in the enquiry proceedings, the petitioner was held guilty of having committed the delinquency. It is submitted that although the Regional Deputy Director, Purnea Circle was appointed as the officer on behalf of the State to present the case, he did not present himself. Learned counsel submits that the enquiry officer submitted his report and a copy thereto was made available to the petitioner but her representation against the enquiry report was not considered and she has been punished with a major penalty of dismissal from service. In the criminal case, trial is pending. Learned counsel submits that the provisions of the Rules of 2005 are mandatory and required to be followed. He relies upon the judgment passed by the Division Bench in L.P.A. No. 63 of 2017 dated 22.08.2017 State of Bihar Vs. Anil Kumar, wherein a similar enquiry, where no evidence was recorded was held to be vitiated

4. Per contra, learned counsel appearing for the State



has supported the case and pointed out that the petitioner has nowhere denied of having received bribe and therefore the punishment order was rightly passed.

5. In this case, on the previous hearing, this Court found that it can be essential to call the concerned officer and the Deputy Director, Education is present. It is informed that as per the circulars issued relating to the Vigilance Enquiry, now the Commissioner, Departmental Enquiry would conduct enquiry in such cases, as per circular dated 28.08.2015.

6. I have considered the submissions. A look at the enquiry report reflects that the enquiry officer has simply mentioned the contentions and explanation given by the delinquent, and thereafter, he has only referred to the F.I.R registered on 08.09.2014 to prove the charges against the petitioner, whose evidence has been recorded nor any opportunity of cross examination, even the officer who conducted the raid has not been examined. This Court is satisfied that the provisions of Rule 17 of the CCA Rules, 2005 has been given complete go by. The enquiry is thus found to be wholly vitiated, and therefore, the consequent order dated 16.12.2016 (Annexure-17) cannot be sustained in law.

7. It appears that even the appellate authority has



failed to get notice of the submission made by the petitioner and has passed a mechanical order without application of mind.

8. In **2009 (2) SCC 570 in Roop Singh Negi Vs. Punjab National Bank**, the Apex Court held as under:-

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal



court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

9. This Court having noticed the general trend and method adopted in departmental enquiry in the Government, had called the Commissioner, Departmental Enquiry, so that the concerned officers may be sensitized with relation to the provisions of the rules of 2005. It was noticed that on account of a slipshod enquiry being conducted, persons who are otherwise guilty of having committed the offences and delinquency, get Scot-free from the Court on account of defective enquiry. The Commissioner, Departmental Enquiry has issued a circular dated 08.11.2022 for the purpose. This Court has also held in the



case of that concerned disciplinary authority as well as the Enquiry Officer would be accountable for such dereliction of their duty in not following the provisions of Rules of 2005, while conducting an enquiry.

10. In the present case also, this Court finds that the order of dismissal cannot be sustained, as the enquiry was not conducted in accordance with the Rules of 2005, for which the concerned enquiry officer as well as the senior authority should be held accountable by the government.

11. While leaving it for the Chief Secretary to take appropriate action, this Court set aside the order dated 16.12.2016 passed by the Director, Elementary Education, whereby the petitioner was dismissed from service as the enquiry conducted by the enquiry officer by the Regional Deputy Director, Purnea is vitiated. Consequentially the appellate order passed by the Secretary dated 04.04.2018 is also quashed and set aside with direction to the Commissioner, Departmental Enquiry, now conduct an enquiry afresh on the charges levelled against the petitioner, in accordance with the rules. The Disciplinary Authority shall pass accordingly fresh order.

12. The petitioner who was under suspension at the



time of passing of the impugned order dated 16.12.2016, shall continue to remain under suspension and would be only entitled to subsistence allowance. The salary for the intervening period shall not be payable but continuity of service shall be granted to the petitioner shall not be payable in terms of no work no pay.

13. The writ petition is allowed as above. The enquiry be concluded within a period of six months.

(Sanjeev Prakash Sharma, J)

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