

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17540 of 2022

Manoj Kumar Giri S/o Hirdya Prasad Giri, Resident of Village-Ashrafpur
Supaul, P.S.-Patori, District-Samastipur for the present posted as the Head
Master at Primary School, Jodpura West, Block-Patori, District-Samastipur.
... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Primary and Secondary Education, Bihar, Patna.
3. The Director, Mid Day Meal Scheme, Government of Bihar, Patna.
4. The District Education Officer, Samastipur.
5. The District Programme Officer, Mid Day Meal Scheme, Samastipur.
6. The District Programme Officer (Establishment), Samastipur.
7. The Block Education Officer, Patori, Samastipur. ... Respondents

Appearance :

For the Petitioner/s : Mr.Binit Kumar, Adv.
For the Respondent/s : Mr.Prabhakar Jha (Gp27)

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

ORAL ORDER

2 02-01-2023 Heard the parties.

Learned counsel for the petitioner submits that the petitioner has been saddled with recovery orders relating to the inspection conducted of mid day meals scheme. As per the orders passed by the Director, where ever there is more than 10% of difference found during the inspection, recovery orders have been directed to be issued against the concerned Headmaster. Learned counsel submits that there are different reasons in each case relating to the attendance being short and the said reasons ought to be taken into consideration by the authority after giving the petitioner an opportunity of hearing to



the Headmaster concerned, speaking orders should be passed. Learned counsel submits that the orders passed by the Director are contrary to the principle of natural justice. He relied upon the judgment passed by this Court in C.W.J.C. No.402 of 2018 decided by this Court on 04.07.2022 in support of his submission.

Per contra, learned counsel appearing for the State submits that the inspections were conducted and accordingly the concerned orders of recovery was passed where deficiency was found. Moreover, the headmasters have preferred appeals against the said order, which have been rejected upholding the orders of recovery. In view thereof, no further opportunity is required to be given to the petitioner.

I have reflected on the submissions.

I find that it is the case of the petitioner, while he has preferred appeal against the orders to the District Education Officer, his appeals has been summarily rejected without passing speaking orders and without giving him opportunity of hearing. The reasons assigned by the concerned respective Headmasters of the school has not been addressed to before holding the recovery to be in accordance with law.

In the opinion of this court, the requirement of principle of *audi alterem partem* has not been fulfilled. This Court in a similar case being C.W.J.C. No. 12365 of 2018



(Vinod Kumar Vrs. the State of Bihar & Ors.) and analogous cases had expressed its dissatisfaction and find that fair opportunity to defend was not provided to the petitioner in relation to recovery being made with regard to mid day meal expenses and following orders was passed:-

“Having considered the submissions as above and after perusal of the order impugned, this Court is satisfied that fair opportunity to defend was not provided to the petitioner. Accordingly, the order dated 15.12.2017 is quashed and set aside. However, the respondents shall be free to conduct an enquiry and provide opportunity of hearing to the petitioner and pass order afresh.

With the aforesaid, this writ petition is allowed.”

However, the respondents shall be free to conduct enquiry and provide opportunity of hearing to the petitioner and pass orders afresh.

Accordingly, this writ petition is allowed and the order dated 07.11.2022 is quashed and set aside.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 17

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