

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1585 of 2020

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Gopal Prasad Singh Son of Late Mahendra Singh Residing of Village-
Champapur, P.S.- Bakhtiyarpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Director (Administration)-cum-Additional Secretary, Education Department, Govt. of Bihar, Patna.
5. The Regional Deputy Director, Education, Magadh University, Gaya.
6. The Regional Deputy Director, Education, Patna Division, Patna.
7. The District Programme Officer (Establishment), Gaya.
8. The District Education Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv Mr. Sumit Kumar Jha Ms. Riya Giri, Adv Mr. Bivutosh Kr. Adv
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc16) Mr. Madhukar Mishra AC to SC 16

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 24-11-2023

Heard learned Senior Counsel for the petitioner and learned
counsel for the State.

2. The present writ petition has been filed for quashing
the order dated 04.06.2019 contained in Memo No. 546
(annexure-18) and also for quashing of the order dated



20.02.2020 contained in Memo No. 242 i.e. original order by disciplinary authority as well as the order passed by the Appellate Authority.

3. Learned counsel for the petitioner submits that the petitioner has earlier moved before this Hon'ble Court in C.W.J.C. No. 1331 of 2015 challenging the order passed by the Principal Secretary, Department of Education, Bihar dated 04.04.2014 contained in Memo No. 519 challenging the disciplinary order. The said order has been set aside by this Hon'ble Court vide order dated 02.02.2018 passed in C.W.J.C. No. 1331 of 2015 in which it has been ordered as under:

“In view thereof, the impugned order of dismissal dated 14.04.2014 cannot be sustained and is accordingly, set aside. The petitioner stands reinstated in service. However, as the allegation is of being caught red handed accepting bribe, the Court, taking a larger view in the matter, deems it appropriate to remit the matter back to the authorities for consideration from the state of issuance of second show cause notice. Thus, the Disciplinary Authority shall be at liberty to take a decision on the enquiry report and act in furtherance thereto in accordance with law, either by passing order accepting the enquiry report of issuing a second show cause notice to the petitioner in terms of Rules 18(2) and 18(3) of the Rules. The same be done within tow months from today. Thereafter, the proceedings shall be taken to their logical conclusion within tree months. As the matter has been remanded to the stage of submission of the enquiry



before the Disciplinary Authority, the position, as was existing at the relevant time stands restored with all consequential benefits. The writ petition stands allowed in the aforementioned terms.”

4. Counsel further submits that after setting aside the order, the respondents authorities have issued a Letter No. 08 dated 02.01.2019 in compliance of Rules 18(2) and 18(3) of Bihar Government Servants (Classification, Control and Appeal) Rules 2005 (Hereinafter, referred to as “Bihar CCA Rules 2005”) by which the Director, Primary Education has shown his reason for disagreement from the finding of the enquiry report and directed to file the show-cause. Counsel submits that in compliance of the said letter dated 08.01.2019, the petitioner has submitted his show-cause before the Director, Primary Education on 22.01.2019. Thereafter, the Director, Primary Education has passed order contained in Memo No. 546 dated 04.06.2019 which is impugned. Counsel further submits that the petitioner has preferred appeal against the said order, but his Appeal was rejected by the Appellate Authority vide order dated 20.02.2020 contained in Memo No. 242. He also submits that in the present writ petition both the orders passed by the Director, Primary Education and appellate order dated 04.06.2019 and 20.02.2020 are challenged respectively .



5. Counsel for the petitioner submits that the order which is contained in Memo No. 28 dated 08.01.2019 is non-reasoned order and further no opportunity was granted by the Disciplinary Authority to the petitioner which is clear violation of Rule 18(5) of Bihar CCA Rules 2005. Counsel further submits that the order of punishment has been passed without consideration of his second show-cause vide order dated 04.06.2019 particularly when the second show cause has been filed meticulously on each and every points.

6. Counsel submits that the burden has been shifted upon the petitioner to prove that Rs. 8,000/- has not been received from him which is wrong proposition of law. Counsel relied on two judgments namely *Lav Nigam v. Chairman & MD, ITI Ltd., (2006) 9 SCC 440* in which the direction has been made that the issuance of the show-cause notice by the disciplinary authority has to be given to the delinquent prior to reaching on final conclusion. He also submits that the proceeding may be recommended from the stage of issuance of fresh show cause notice vide disciplinary authority to the appellant indicating his tentative disagreement with finding of the Enquiry Officer.

7. Counsel further relied on Judgment of *Punjab National Bank and Ors. Vs Kunj Bihari Mishra with chief*



personal disciplinary authority Punjab National Bank and Anrs. Vs. Shanti Prasad Goyal reported in (1998) 7 SCC 84 and submits that disciplinary authorities are required to give an opportunity of representation to charge employee before differing with those findings of the Enquiry Officer. Counsel further submits that one more issue in the present case is that the petitioner is entitled for the subsistence allowance which has not been paid to him during the continuation of the disciplinary proceeding, and therefore, the decision may be given on the payment of subsistence allowance of the petitioner.

8. Counsel for State on the other hand opposes the prayer of petitioner and submits that there is no merit in the case of the petitioner due to the reason that on early occasion this Hon'ble Court has pleased to set aside the order passed by the disciplinary authorities as punishment vide order dated 02.08.2018 in C.W.J.C. No. 1331 of 2015 on the ground that there is deficiency in compliance of Rule 18(2) and Rule 18(3) of Bihar CCA Rules. Counsel put emphasis that it is true that this Hon'ble Court has pleased to set aside the dismissal order dated 14.04.2014 but simultaneously ordered that as the allegation of being caught red handed accepting bribe, the Court, taking a larger view in the matter, deem it appropriate to



remit the matter back to the authorities for consideration from the stage of issuance of the second show-cause notice. This Hon'ble Court has pleased to grant further liberty to take decision on the enquiry report and act in furtherance, thereof, in accordance with law and in compliance of the said order passed in this Hon'ble Court in C.W.J.C. No. 1331 of 2015 and as well as in the light of law following the rules i.e. Rule 18(2) and Rule 18(3) of the Bihar CCA Rules 2005, a letter no. 28 dated 08.01.2019 in the form of disagreement memo and demanding second show-cause has been issued to the petitioner in which categorical reason has been assigned. Counsel also submits that in compliance of the said letter i.e. Letter No. 28 dated 08.01.2019, the petitioner has filed show-cause and upon consideration of the petitioner's show cause, the final order has been passed by the disciplinary authority.

9. Learned counsel for the State further submits that the representation filed by the petitioner is taken into consideration as in Paragraph 10 of the said order the consideration of the show cause has been explained. Counsel submits that the point raised by the petitioner that there is further violation of the Rule 18(5) of Bihar CCA Rules 2005. He further submits that Rule 18(6) of the CCA Rules, 2005 permits the disciplinary



authorities to pass order on the second show cause and there is no bar in the same. Counsel further submits that the Judgment cited by the petitioner is not applicable in the present case due to the reason that those judgments are not related to Bihar CCA Rules 2005 and petitioner has also not clarified that whether the provisions of law which has been discussed in those relevant judgments and also provision of law discussed in Bihar CCA rules 2005 are identical or not. It has also been submitted by counsel for State that the another judgment relating to bank matter and disciplinary law for bank matter and disciplinary law for the State of Bihar is different.

10. On the point of subsistence allowance, counsel submits that there is no pleading in the counter affidavit about the payment or acceptance of subsistence allowances.

11. Upon going through the pleadings, the documents on records and the case laws as well as hearing the parties, it transpire to this Court that this Hon'ble Court vide order dated 02.08.2018 passed in C.W.J.C. No. 1331 of 2015 has directed the disciplinary authorities to conclude the departmental proceeding from the stage of issuance of Second show cause. Annexure-17 is the letter issued by the disciplinary authority in which the points related to disagreement of the enquiry report



has been mentioned as well as direction has been made through the delinquent to file representation/second show cause.

12. Upon going through the content of the Annexure-17, it transpires to this Court that there is specific reason assigned by the disciplinary authorities in the said letter on the basis of which second show cause has been issued. In the second show cause, the petitioner has raised specific plea that the person complained against the petitioner that his appointment was bad as well as he was accused in criminal case and since December, 2009 particularly from 15.12.2009 to 22.12.2009 he was in jail as such his appointment was either wrong or forged. He has also taken the plea that there was no direction issued by the department for payment of his salary and in that case the question of demand of bribery of Rs. 8,000/-(Rupees eight thousand) from the delinquent by the alleged complainant is absolutely non-existent and irrational. This point has also been taken that allegation of acceptance of the said amount is absolutely wrong due to the reason that if demand has been made then alleged complainant should be necessarily present at that time.

13. At the time of passing final order i.e. memo no. 546 dated 04.06.2019 which is Annexure-18(A), the points raised by



the petitioner has been taken into consideration on which specific finding has been made by the disciplinary Authority that with regard to his innocence and no involvement in this case, no document has been produced in the second show-cause.

14. This Court is of the view upon perusal of the charge-sheet that documents were attached in the charge-memo and said amount has been recovered from the possession of the petitioner in trap case and if petitioner has taken the defence that during the said period the alleged complainant was in custody and there is no question of his appointment and if there is any, it is forged and fabricated. Then by virtue of making this statement, the burden shifts upon the petitioner to prove that during this period, the alleged petitioner is in custody and as well as the money recovered from his possession has come from where.

15. Recently in *State Bank of India Vs. A.G.D. Reddy 2023 (4) PLJR SC 89* relied on *Orissa Mining Corporation & Anr. Vs. Ananda Chandra Prusty (1996) 11 SCC 600* the Hon'ble Supreme Court has decided that in Disciplinary Proceeding, the question of burden of proof would depend upon the nature of the charge and the nature of the explanation put forward by the respondent. In a given case, the burden has been



shifted to the respondent depending upon explanation whose Paragraph 22 is as follows.

“Having considered the above, we are considered to conclude that the change of the Bank, that the inspection was not carried, stood established. Then it was for the respondent to show, as undertake by him, what his response to the allegation was.”

16. In the light of the above discussion, this Court is of the opinion that there is no need of any interference in the order passed by the Disciplinary Authority.

17. From the order under Appeal dated 20.02.2020, it transpires to this Court that reasoned order has been passed considering all aspects of the matter and hence there is no need of interference in both the orders.

18. So far as the question of payment of subsistence allowances is concerned during the departmental proceeding, it is lawful right of any delinquent in this regard. There is no pleading which has come on behalf of the state. This Court directs that state shall pay the entire subsistence allowance to the petitioner in accordance with law within three months from the date of production of this order.

19. As such, this writ petition is dismissed on the ground that there is no interference is to be made in the order passed by the disciplinary authorities and appellate authorities but allowed



on the payment of subsistence allowance to the petitioner during
departmental proceeding.

(Dr. Anshuman, J)

Sunnykr/-

AFR/NAFR	
Uploading Date	
Transmission Date	

