

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4302 of 2021

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Vijay Kumar Verma S/O- Late Kapileshwar Parshad Resident of Mohalla -
Mathiya Zirat, P.S. - Chatauni, P.O. - Motihari, P.S. Town - Motihari, District
- East Champaran (Motihari), State Bihar, PIN - 845401.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna.
2. The Director, Primary Education, Education Department, Bihar, Patna.
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. The District Education Officer, District- West Champaran (Bettiha).
5. The District Education Officer, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv. Mr. Ayush Kumar, Adv. Mr. Kanishk Kaustubh, Adv. Mr. Shikhar Mani, Adv. Mr. Adarsh Kumar, Adv. Ms. Lakshmi Kumari, Adv. Mr. Rajnish Prakash, Adv.
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc16)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date :09-07-2024

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

2. Learned counsel for the petitioner filed a hard
copy of the writ petition in Court. Let it be kept on record.

3. The present writ petition has been filed seeking
the following reliefs:

*“i) For setting aside the Enquiry Report contained
in Letter No. - 04 (Uchch) dated 06-01-2020
(Annexure 5/ Page No. 75) submitted by the Enquiry
Officer i.e the Regional Deputy Director of
Education, Tirhut Division, Muzaffarpur*



(Respondent no. 3), who found proved the charges only on the basis of Pre-Trip, Post Trip Memorandum (FIR), without recording any oral testimony.

ii.) For setting aside the order contained in Memo No. 424 dated 06-05-2020 (Annexure-8) issued under the signature of Director, Primary Education, Education Department, Bihar, Patna (Respondent no. 2), whereby the petitioner has been dismissed from service in exercise of the power conferred under Rule 14 (XI) of Part V of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 [hereinafter called as 'CCA Rules - 2005' for the sake of the brevity) and his salary for the period of the suspension has also been denied.

iii.) For setting aside the Appellate order contained in Memo No. - 742 dated 19-08-2020 (Annexure-10) issued under the signature of the Principal Secretary, Education Department, Government of Bihar, Patna the Respondent No. 1, whereby the appeal filed by the petitioner was dismissed affirming the order of dismissal.

iv.) For that the petitioner further prays that after setting aside the order of Dismissal and appellate order, he may be reinstated in service, as he has been dismissed from service in a most arbitrary and illegally manner and he has not been in gainful employment after dismissal from service and

v.) For issuance of Writ in appropriate nature, Order or direction to the Respondent authorities for the payment of the due arrears of the subsistence allowance of the month of August & September -2019, which has not been paid till date

vi.) Any other relief/reliefs that the Petitioner may be found to be entitled to in the facts and circumstances of the present case."

4. The petitioner was appointed as Assistant Teacher in Basic School by the order of the Respondent No. - 4 vide his Memo No. - 5146 dated 15-10-1990. After his joining the Petitioner was transferred to different places time to time.



Further, the Petitioner was promoted to Subordinate Education Services vide Memo No. - 1719 dated 14-07-2012. A Complaint dated 25-01-2019 filed by one Munindar Ram, Panchyat Teacher-cum-Incharge Head-Master, Primary School Khajuriya (North), Block Ramnagar, District West Champaran; before the Vigilance alleging therein that the petitioner has demanded bribe of Rs.40,000/- for deferring the suspension and adjustment of development fund. Thereafter, the petitioner was trapped and allegedly arrested on 26-02-2019 by the Raiding Team of the Vigilance Investigation Bureau, Bihar, Patna and thereafter, an F.I.R. was registered as Vigilance P.S. Case No. 07/2019 dated 25-02-2019 for offences under Section 7 (a) of the Prevention of Corruption Act, 1988 (Amended 2018) and further the petitioner forwarded to Judicial Custody (Annexure-1 to the writ petition).

5. Learned counsel for the petitioner submits that the petitioner was suspended with effect from 26-02-2019 (i.e. from the date of the custody) under the CCA Rules - 2005 vide Memo No. 389 dated 05-04-2019 issued under the signature of the Respondent No.3. After sometime the petitioner was granted bail by the Hon'ble Patna High Court and thereafter, the Petitioner filed an application before the Respondent No. 3 for the approval of his joining. The suspension of the petitioner was



subsequently revoked from the date of joining. The Director, Primary Education (Respondent no. 2) thereafter, framed charges against the petitioner on 13.09.2019. The charges were all related to demand of illegal gratification and arrest red handed based on the pre-trap, post trap memo etc (Annexure-2 to the writ petition). The Director Primary Education, Education Department, Bihar, Patna, thereafter, vide his order contained in Memo No. 1573 Dated 16-09-2019 re-suspended the petitioner w.e.f. 26-08-2019 and his headquarter was fixed at the Office of the Respondent No.6 and also ordered for initiations of Departmental proceeding and in this connection the Regional Deputy Director of Education, Tirut Division, Muzaffarpur (Respondent no. 3) was appointed as the enquiry officer and the District Education Officer, Bettiah (Respondent No. 4) was appointed as Presenting Officer (Annexure-3 to the writ petition).

6. Learned counsel for the petitioner further submits that in course of the departmental enquiry the petitioner submitted his detailed reply dated 04-01-2020 before the enquiry officer Respondent No. 3; wherein the petitioner especially and categorically denied from the all charged levelled against him (Annexure-4 to the writ petition). He further



submits that that no witnesses were examined to prove the charges, but even then the Enquiry Officer (Respondent No.3) submitted enquiry report Letter No. - 04 (Uchch) dated 06-01-2020 finding all the charges proved (Annexure-5 to the writ petition).

7. Learned counsel for the petitioner further submits that relying on the aforementioned Enquiry Report Letter No. - 04 (Uchch) dated 06-01-2020 the Respondent No.2 issued a second Show-Cause Notice vide his Memo No. 129 dated 03-02-2020 and asking the petitioner to submit explanation within a period of 15 days (Annexure-6 to the writ petition). The petitioner in compliance of the aforementioned Memo No. 129 dated 03-02-2020 submitted his detailed reply dated 20.02.2020 before the Respondent No.2 on 24-02-2020; wherein again the Petitioner specifically and categorically denied from the all charges levelled against him for the reasons mentioned therein. The Disciplinary authority i.e. the Respondent No.2 without considering the reply of the petitioner and without considering the fact that no oral testimony of any witnesses were recorded to prove the charges inflicted the punishment of dismissal from the service, upon the petitioner vide Memo No. 424 dated 06-05- 2020 (Annexure-8 to the writ



petition). He further submits that thereafter the petitioner file statutory appeal and the said appeal was dismissed by the authority without considering the reason given by the petitioner (Annexure-10 to the writ petition).

8. Learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Apex Court, reported in **209 (2) SCC 570 (Roop Singh Negi vs. Punjab National Bank & Ors.)**, paragraph nos. 14, 15 and 23 whereof would squarely apply to the case in hand and is therefore being reproduced hereinbelow:-

“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.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been



placed by the enquiry officer was the purported confession made by the appellant before police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a matter that no evidence was left.

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 to 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. Learned counsel for the State fairly submits that no witnesses were examined during course of enquiry and also no heed was paid on the replies given by the petitioner, only on the basis of the F.I.R. the enquiry officer has submitted the enquiry report and the petitioner was held guilty in the departmental proceeding.

10. Considering the facts and circumstances of the case and the judgment rendered by the Hon’ble Apex Court in case of **Roop Singh Negi** (*supra*), the Memo no. 424 dated 06.05.2020 (Annexure-8) and Memo no. 742 dated 19.08.2020 (Annexure-10) are hereby quashed. The respondent authority is directed to reinstate the petitioner on service and the petitioner is also entitled for all the consequential benefits.

11. With the aforesaid direction, the writ application stands disposed off.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.07.2024
Transmission Date	NA

