

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10015 of 2017

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Jagtendra Prasad Singh son of late Raj Mohan Singh resident of village -
Kataiya, Police Station - Purnahiya, District - Sheohar.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, S.C./S.T. Welfare Department, Government of Bihar, Patna.
3. The Director, S.C./S.T. Welfare Department, Government of Bihar, Patna.
4. The District Welfare Officer, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahasweta Chatterjee
For the Respondent/s	:	Mr. Prashant Pratap- Gp2

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

Date : 28-06-2024

1. The petitioner has filed the present writ application challenging the order of punishment bearing Memo No. 5832, dated 20.10.2016 (Annexure 9), passed by the Director SC/ST, Welfare Department, whereby the punishment of censure in a department inquiry, has been imposed and further that the petitioner would not be entitled for any payment except the subsistence allowance during the period of suspension. The petitioner has prayed for consequential relief for quashing the appellate order bearing Memo No. 824, dated 29.03.2017 (Annexure 10), passed by the Appellate Authority affirming the order of punishment. The petitioner has further prayed for a direction upon the



respondent to pay the petitioner's salary for the period 04.07.2015 to 17.12.2015.

2. Brief facts of the case, as per the statement made in the writ petition that the petitioner was appointed as Assistant Teacher in physical education in the year 1994 and was posted in Government Residential High School, Sugaon, East Champaran. In the year 2007, the service of the petitioner was brought under Schedule Caste/Schedule Tribe Welfare Department and in the year 2011 the petitioner was posted at Government Ambedkar Residential High School, Ramnagar, Madhubani. On 23.06.2015, a student, residing in the hostel of the school, namely Sumant Kumar Saday of Class 7, had gone for private tuition at a distance of one and a half kilometers away from the school. Unfortunately, at about 3:45 p.m., he met with a road accident and on 24.06.2015, he died at Patna medical College hospital (PMCH). On 25.06.2015, in the morning, at about 11:30 a.m., some students entered into the Chamber of District Welfare Officer, ransacked the office and assaulted the District Welfare Officer causing injury to him.

3. The District Welfare Officer lodged a complaint/FIR, disclosing the name of some students who had attacked him along with the name of the petitioner who was entrusted for



discharging the duty of the Incharge/Headmaster of the school alleging that the petitioner was involved in the said occurrence.

4. *Vide* Memo No. 06 dated 04.07.2015, the petitioner was put under suspension by the Collector, Madhubani, and *vide* order bearing Memo No. 2553, dated 18.12.2015, the suspension of the petitioner was revoked.

5. The Sub Divisional Police Officer and Additional Superintendent of Police, in their supervision note, mentioned that the charge of involvement of the petitioner in the occurrence of assault of District Welfare Officer is not correct.

6. The Deputy Director, *vide* Memo No. 469, dated 10.09.2015, served a memo of charge under Form 'K' upon the petitioner. Three charges were levelled against the petitioner having Charge No. 1 that one student, namely Sumant Kumar Saday, of Class 7 had gone about one and a half kilometers away from the school and met with an accident and subsequently, died in PMCH during treatment. The students of the school ransacked the office of Welfare Officer, Madhubani. The student left the school without permission which shows that the petitioner instigated the students to commit vandalism in the office of the Welfare



Officer causing pecuniary loss to the government. This shows the involvement of the petitioner. Charge No. 2 is that one student died after having tuition shows that student goes outside the school without permission and information, in this regard, was not given to the District Welfare Officer by the petitioner which is complete violation of the rules and shows the dereliction duty. Charge No. 3 is that the petitioner, without information to the District Welfare Officer, went in the office of Deputy Director, Welfare Department, along with the other teachers which shows indiscipline, derelictions of duty on part of the petitioner.

7. The Deputy Director, Welfare, Darbhanga Division, was appointed as Inquiry Officer and the District Welfare Officer, Madhubani, was appointed as a Presenting Officer. The Inquiry Officer, after inquiry, submitted the inquiry report on 23.09.2006 exonerating the petitioner from all the charges.

8. Though, the Inquiry Officer exonerated the petitioner from all the charges, the disciplinary authority i.e., Director SC/ST, Welfare Department, Government of Bihar, differed with the report of the Inquiry Officer and *vide* letter no. 5302, dated 02.09.2016 (Annexure 7), issued second show cause stating that:-



1. The petitioner sent the student for taking private tuition from outside which proves that there is no proper arrangement of teaching in their school.

2. It is the duty of the Headmaster to maintain the peace and to discharge daily duty in the school but the petitioner failed to discharge his duties.

9. The petitioner submitted reply to the second show cause on 28.09.2016 and without considering the same, the disciplinary authority imposed punishment of censure and also ordered that the petitioner shall not be entitled for any amount except the subsistence allowance during the suspension period i.e., 14.08.2015 to 17.12.2015. The petitioner preferred appeal before the Appellate Authority who affirmed the order of punishment.

10. Learned counsel for the petitioner submits that since the effect of the punishment of censure has come to an end, she is not challenging the order of punishment of censure. Insofar as non-payment of salary for the period of suspension, except the subsistence allowance only, learned counsel submits that forfeiture of salary for the period of suspension cannot be a punishment in the departmental proceeding unless prior notice, in this regard, for withholding any payment of the suspension period, was served upon the



delinquent. She relies upon the judgment of **Indu Prakash Sao v. The State of Bihar and Others 2013 Vol. 3 PLJR Page 1.**

11. Further, learned counsel submits that none of the charges, against the petitioner, has been proved in the departmental inquiry. The disciplinary authority has not served upon the petitioner the point of difference along with the cogent materials but on the contrary, has served a second show cause which cannot be said to be a point of difference. The disciplinary authority, differing with the findings of the Inquiry officer in the second show cause, dated 02.09.2016, has stated that though the Inquiry Officer did not find the charges proved against the petitioner but the disciplinary authority is not in agreement with the same and accordingly, asked the petitioner to submit a second show cause on two charges that:-

1. The petitioner sent the student for taking private tuition from outside which proves that there is no proper arrangement of teaching in the school.

2. It is the duty of Headmaster to maintain the peace and to discharge daily duty in the school but the petitioner has failed to discharge his duties.

12. On the other hand, learned counsel for the state submits



that petitioner was given a second show cause by the disciplinary authority and thereafter, order of punishment was passed after considering the reply of the show cause filed by the petitioner and the same was affirmed by the Appellate Authority.

13. I have heard learned counsel for the parties and have gone through the materials on record.

14. Due to lapse of time and the punishment of censure, having lost its force, the petitioner primarily attacked the order of punishment of forfeiture of salary for the suspension period which is between 04.07.2015 to 17.12.2015.

15. This court, in the judgment of **Indu Prakash Sao v. The State of Bihar and Others (Supra)**, has held that for withholding any payment of suspension period except the subsistence allowance, a show cause is necessary to be given to the delinquent. Salary withheld for the period of suspension, without prior notice is violative of Rule 97 (3) of the Bihar Service Code, 1952. Paragraph 8 of the judgment is quoted for ready reference :-

Coming to the other remaining claim of the petitioner namely for payment of full salary during his suspension, however, it would appear that no specific show cause for



withholding payments other than subsistence allowance was given to the petitioner before passing of such order. It is well settled that for withholding any payment of the suspension period except subsistence allowance, a show cause is necessary to be given to the delinquent, as held by a Division Bench of this Court in the case of Sri Mahavir Prasad vs. The State of Bihar (1988 PLJR 82). To the same effect is the decision reported in 2008(2) PLJR 56 (Kishori Lal vs. The State of Bihar & Ors.) holding that salary withheld for the period of suspension without prior notice is violative of Rule 97 (3) of the Bihar Service Code, 1952.

In the above view of the matter, therefore, it is held that the petitioner is entitled to his salary for the period of suspension and such period shall be deemed to be spent on duty, with all consequential benefits.

16. Admittedly, prior to passing the order of forfeiture of salary for the suspension period, no show cause for this punishment was given to the petitioner by the disciplinary authority. Accordingly, in my opinion, the second punishment of forfeiture of salary, for the suspension period, is not sustainable.

17. Though, the petitioner has confined her prayer regarding the imposition of punishment of forfeiture of subsistence



allowance and not in fact challenging the punishment of censure on the ground it has lost its force but while going through the second show cause, issued by the disciplinary authority, I found that the disciplinary authority, in his second show cause dated 02.09.2016, has merely said that it is not in agreement with the finding of the Inquiry Officer and directed the petitioner to submit his show cause on two fresh charges.

18. In my considered opinion that merely saying by the disciplinary authority that it is not in agreement with the finding of the Inquiry Officer is not sufficient and I am satisfied that it cannot be accepted as the point of disagreement of the disciplinary authority differing with the findings of the Inquiry Officer.

19. The Hon'ble Supreme Court, in the case of **Punjab National Bank and Others Vs. Kunj Bihari Mishra reported in 1998 7 SCC**, has held that a delinquent is entitled to represent to the disciplinary authority where the findings in the inquiry report are against him. It will not, therefore, stand to reason that when the findings are in favour of the delinquent but they are proposed to be overturned by the disciplinary authority, then no opportunity should be granted. The Hon'ble Supreme Court



has further held that whenever the disciplinary authority disagrees with the Inquiry Officer on any article of charge, then before it records its own finding on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings.

20. In the present case, the disciplinary authority has not recorded its own findings differing with the findings of the Inquiry Officer on all the charges and has also not recorded its tentative reasons for such disagreement giving the delinquent officer an opportunity to represent, before the disciplinary authority records its findings. The principle of natural justice requires the disciplinary authority to give an opportunity to the officer charged of misconduct to represent before him before it records its finding on the charges framed against the delinquent officer.

21. In the result, I find gross procedural lapse and violation of principle of natural justice in imposing punishment against the petitioner, accordingly, the order of punishment bearing Memo No. 5832, dated 20.10.2016 as well as consequential appellate order bearing Memo No. 824, dated 29.03.2017 are not sustainable and are set aside.

22. Consequently, the writ application is allowed. The



respondent-authorities are directed to pay the salary for the suspension period minus the subsistence allowance already paid to the petitioner for the period 04.07.2015 to 17.12.2015.

(Anil Kumar Sinha, J)

HarshPandey/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

