

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4580 of 2020

Subodh Kumar Yadav, S/o Late Laxmi Narayan Yadav, R/o-Navratan Hata,
P.s.-Khachanchi Hat, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Purnea Division, Purnea.
5. The District Education Officer, Purnea.
6. The District Programme Officer (Estt.), Purnea.
7. The District Programme Officer, Secondary Education, Purnea.
8. The Block Education Officer, Purnea Sadar, Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh
For the Respondent/s : Mr. Subash Chandra Mishra (Sc16)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV

Date : 29-05-2024

Heard learned counsel for the parties.

2. The present writ application has been filed on behalf of the petitioner for the following reliefs:-

(i) To quash the order contained in memo no- 748 dated 02.03.19 issued by the District Education Officer Purnea whereby and whereunder the petitioner has been dismissed from the posts of Assistant Teacher, Middle School mulabbas-Block Purnea East, District- Purnea. A copy of order memo no.748 dated 02.03.19 (Annexure- 1 to writ application).

(ii) To quash the order contained in the Appellate order contained in memo no- 205 dated 17.05.2019 issued by Regional Deputy Director of Education, Purnea Division



Purnea whereby and whereunder the appeal prefer by the petitioner against the order dated 02.03.2019 (Ann- 1) has been rejected. A copy of memo no- 205 dated 17.05.2019 (Annexure-2 of the writ application.)

(iii) To direct the respondents to pay arrears of salary to the petitioner from March 2018 to July 2018 and from March 2019 till date with statutory interests.

(iv) To direct the respondents not to disturb the petitioner from discharging his duties on the post of Assistant Teacher in Middle School, Gulabbag, Block-Purnea East, Purnea and pay the regular salary on month to month basis.

(v) Thereafter, further reliefs were added by way of I.A. No.1 of 2021, to quash the order contained in memo no.664 dated 29.07.2020, Annexure-32 of the writ application, issued by the Director, Primary Education (Respondent No.3) whereby and whereunder Revision preferred by the petitioner against order dated 02.03.2019 (Annexure-1 of the writ application) and order dated 17.05.2019 (Annexure-2 of the writ application) has been rejected.

3. The short fact of the case is that, in 1988, petitioner was appointed on the post of Assistant Teacher and was posted in Primary School Patila Bhasa, Block Pothiya, District-Kishanganj. In 1989, the petitioner was transferred from the above said school to Middle School Maharajpur, Purnea East, District-Purnea, where he submitted his joining which was duly accepted by the concern Headmaster and started discharging his duties to the satisfaction of authorities concern. Thereafter, in the year 1990, the petitioner was granted promotion in B.Sc. trained scale.



4. After transfer and posting in different schools, in the year 2007, the petitioner was transferred in Middle School Gulabbag, Block- Purnea East, Purnea, where he submitted his joining as Acting Headmaster and started discharging his duties to the satisfaction of authorities concerned.

5. While the petitioner was discharging his duties on the post of acting Headmaster, the District Programme Officer, (Estt.) Purnea vide memo no- 2815 dated 28.09.2013 issued memo of charge against the petitioner (Annexure- 3 to the writ application).

6. From perusal of the memo dated 28.09.2013 (Annexure- 3), it appears that altogether 6 charges were framed against the petitioner. One Amrendra Gaur, posted as Programme Officer SSA, Purnea was appointed as conducting Officer and Block Education Officer, Sadar Headquarter was appointed as Presenting Officer.

7. No preliminary enquiry was conducted by the disciplinary authority. Before issuance of memo of charge, no decision with respect to initiation of departmental proceeding against the petitioner was taken by the Government or by the Appointing Authority or any authority to which the Appointing Authority is subordinate or any other authority empowered by special order



of the Government. Along with memo of charge, list of witnesses, as per rules 17 (3) (ii) (b) of Bihar CCA Rule 2005 was not provided to the petitioner.

8. Vide letter no- 126 dated 14.11.2013, the Conducting Officer directed the petitioner to submit his explanation within a period of one week (Annexure- 4 to the writ application).

9. On 04.10.2013, the petitioner submitted an application before the District Education Officer, Purnea against the memo of charge and has prayed for stay of the said proceeding against him. (Annexure- 5 to the writ application).

10. That in response to the application dated 04.10.2013 (Annexure-5), the District Education Officer, Purnea vide memo no- 4026 dated 15.11.2014 has stayed the proceeding against the petitioner. (Annexure- 6 to the writ application).

11. The District Programme Officer (Establishment) Purnea, vide memo no- 2504 dated 12.08.2015 has set aside the order contained in letter no- 4026 dated 15.11.2014 (Annexure- 6) issued by the District Education Officer Purnea and further directed to initiate proceeding against the petitioner in pursuance to memo of charge on 28.09.2013 (Annexure-7 to the writ application).

12. That against memo of charge dated 28.09.2013 and also



against order dated 12.08.2015 (Annexure-7), the petitioner filed C.W.J.C. No- 6845/2016 before this Court. During the pendency of the above said writ application, the District Education Officer, Purnea vide memo no- 2197 dated 14.09.2017, issued direction to the Conducting Officer and Presenting Officer to serve supplementary charge memo to the petitioner and complete the proceeding within a week and submit the enquiry report. Along with this, supplementary charge memo was issued (Annexure- 8 to the writ application).

13. That again along with supplementary charge of memo, the list of witnesses was not provided to the petitioner. However, the petitioner submitted his reply to the charge of memo as also to the supplementary charge memo to the Conducting Officer.

14. On 13.02.2017, the Conducting Officer prepared the enquiry report and vide letter no- 348 dated 13.10.2017, submitted the enquiry report to the District Programme Officer (Establishment) Purnea (Annexure-9 to the writ application).

15. That relying upon the said enquiry report, vide memo no- 161 dated 09.03.2018, the District Education Officer Purnea dismissed the petitioner from the post of Assistant Teacher (Annexure- 10 to the writ application).

16. During the pendency of the above said writ application



i.e. C.W.J.C. No.6845 of 2016, order of dismissal dated 09.03.2018 was issued as such Interlocutory Application challenging the order dated 09.03.2018 was filed.

17. On 02.05.2018, the above said writ application was heard and the entire proceeding which was initiated with the petitioner was held to be totally against the law and suffer from vice of procedural impropriety and it was further directed to the respondents authority to start departmental proceeding afresh from the stage of examination of witnesses and conclude the departmental proceeding within the period of 6 months (Annexure- 11 to the writ application).

18. That when the order dated 02.05.2018 passed by this Court was not complied with, the petitioner filed contempt application bearing M.J.C. No- 2012/18. During the pendency of the abovesaid contempt application, the District Education Officer Purnea vide memo no- 1718 dated 11.07.2018, granted permission to the petitioner to submit his joining in the school where he was working. Petitioner was also placed under departmental proceeding. It has also been stated that fresh charge memo will be issued against the petitioner (Annexure- 12 to the writ application).

19. Accordingly, on 12.07.2018, the petitioner submitted his



joining in the concern school and started discharging his duties to the satisfaction of authority is concern and also getting his salary.

20. Again vide memo no- 504 dated 16.07.2018, the District Education Officer, Purnea modified its order dated 11.07.2018, in view of the order passed by this Court, and has held that there is no requirement of issuance of fresh memo of charge. Further the District Programme Officer, Secondary Education, Purnea was appointed as Conducting Officer and Block Education Officer, Sadar Head Quarter, Purnea as Presenting Officer and directed to conclude the proceeding within a period of two months. (Annexure-13 to the writ application).

21. Thereafter, vide memo no- 466 dated 24.08.2018, the petitioner was informed by the Conducting Officer that on 31.08.2018 the case of the petitioner was fixed for hearing and petitioner was also requested to appear on the said date. Accordingly, he appeared on 31.08.2018 before the Conducting Officer but the Presenting Officer was not present nor any proceeding was initiated as such the petitioner was informed that next date will be communicated to him very soon.

22. That, again vide letter no- 490, dated 04.09.2018, the Conducting Officer while communicating the charge of memo



and supplementary charge of memo directed the petitioner about the next date of hearing which was fixed on 14.09.2018 (Annexure- 15 to the writ application). When the petitioner received letter dated 04.09.2018, he requested Conducting Officer, vide letter dated 08.09.2018 to provide the complaint petition of Nita Kumari so that on 14.09.2018 he may place his case. (Annexure- 16 to the writ application).

23. On 14.09.2018, the petitioner appeared before the Conducting Officer. Apart from the petitioner, one Rabindra Kumar, Ex Headmaster, the Presenting Officer and Nita Kumari appeared before Conducting Officer. Their statement was recorded by the Conducting Officer. Apart from their statement, no further development such as examination and cross-examination of witness nor the documents relying upon which statement of witnesses was recorded was provided to the petitioner even though he specifically asked for the same. This violates section 17 (14) of CCA Rules 2005. He submits that no further date was fixed by the Conducting Officer.

24. On 03.10.2018, the Conducting Officer prepared the enquiry report and vide letter no- 580 dated 06.10.2018 has submitted the same before the District Programme Officer (Establishment) Purnea (Annexure-17 to the writ application).



25. After submissions of enquiry report, the District Programme Officer (Establishment) Purnea, vide letter no- 2668 dated 25.10.2018, provided the complaint petition of Nita Kumari dated 20.02.2015 and 12.06.2015 (Annexure- 18, 18 A & 18 B to the writ application).

26. Thereafter, the Conducting Officer, who has already the submitted his / enquiry report dated 03.10.2018, again issued letter no- 638 dated 22.11.2018 by which the petitioner was informed that the date has been fixed on 29.11.2018 and as such on the basis of complaint petition which has been provided to the petitioner he may submit his response on 29.11.2018 (Annexure- 19 to the writ application). Learned counsel for the petitioner submits that issuance of letter dated 22.11.2018 by the Conducting Officer itself vitiates the entire proceeding.

27. That the Presenting Officer was not intimated about the letter dated 22.11.2018 (Annexure- 19). On 29.11.2018, the petitioner appeared before the Conducting Officer but nothing happens. As per section 17 (23) (1) of Bihar CCA Rules 2005, after submissions of enquiry report, the Conducting Officer becomes Functionary-Officio and as such he seized to be a part of further proceeding.

28. Again the Conducting Officer, who becomes Functionary-



Officio, issued letter no- 669 dated 07.12.2018 to the petitioner and others, fixing the date of hearing on 14.12.2018 (Annexure-20 to the writ application).

29. From perusal of letter dated 07.12.2018, it appears that apart from petitioner, Shailesh Rai and Priyanka Rai, Rohini Annupriya and Prerna Prachi were also sent notice. This time a copy of letter dated 07.12.2018 (Annexure-20) was not forwarded to the Presenting Officer.

30. On 14.12.2018, the petitioner appeared and again submitted his written defence before Functionary-Officio, Conducting Officer (Annexure-21 to the writ application).

31. That apart from petitioner, statement of Priyanka Rai was also recorded by the Functionary-Officio Conducting Officer and has categorically stated that she has no concern with the petitioner. The said Priyanka Rai has also submitted an affidavit to the said Conducting Officer (Annexure- 22 to the writ application).

32. Vide letter no- 687 dated 24.12.2018, the Conducting Officer again submitted his report to the District Programme Officer (CAA Rules) Patna (Annexure- 23 to the writ application).

33. That vide letter no.3153 dated 27.12.2018, the District



Programme Officer (Establishment) Purnea directed the Conducting Officer to re-examine all the documents and then submit his report as the earlier reports submitted by him was not appropriate (Annexure- 24 to the writ application).

34. Vide letter no- 33 dated 09.01.2019, the Conducting Officer communicated the District Programme Officer (Establishment) Purnea that he has already submitted his enquiry report and has also intimated that if he is not satisfied with his enquiry he may direct some other officer for a fresh enquiry.

35. Vide memo no- 410 dated 06.02.2019, the District Education Officer, Purnea issued the second show-cause and directed the petitioner to submit his response within 7 days (Annexure-26 to the writ application).

36. From perusal of the second show cause dated 06.02.2019, it appears that the same is based on the same enquiry report of the Conducting Officer which was turned down by the District Programme Officer (Establishment) Purnea ,himself.

37. That it is further appears from the second show-cause that some kind of enquiry has also been conducted by the disciplinary authority.



38. That there is no such provision in Bihar CCA Rule 2005, that after submissions of enquiry report, the disciplinary authority will also make an enquiry and that too ex-parte. That because of some serious Medical issues, the petitioner took Medical Leave from 28.02.2019 which was duly sanctioned by the Headmaster of the School where the petitioner was posted.

39. However, knowing fully well of this fact that the petitioner is on medical leave, the District Education Officer, Purnea as well as District Programme Officer (Establishment) Purnea issued the impugned order contained in nemo no- 748 dated 02.03.2019 (Annexure-1) by which the petitioner has been dismissed from the post of Assistant Teacher.

40. That when petitioner submitted his joining in the school, he was informed that he has already been dismissed for the service. He was also informed that before issuance of dismissal order second show-cause notice was issued to him. Petitioner after getting second show-cause notice, submitted his reply to the second show cause on 13.03.2019 before the District Education Officer Purnea (Annexure-27 to the writ application).

41. When no further development took place the petitioner filed appeal before the Regional Deputy Director of Education Purnea Division, Purnea on 19.03.2019 (Annexure- 28 to the



writ application).

42. Without considering the contention raised in appeal dated 19.03.2019, the R.D.D.E., Purnea Division vide memo no- 205 dated 17.05.2019 has rejected the appeal of petitioner. (Annexure- 2 to the writ application).

43. That during the pendency of the present writ application, the Director, Primary Education rejected the Revision vide memo no.664 dated 19.07.2020 (Annexure-32 of the I.A. No.01 of 2021).

44. Learned counsel for the petitioner submits that the memo of charge was framed on 25.09.2013 on the basis of certain allegations levelled by the ex-wife of the petitioner but the petitioner was not provided with the complaint of his ex-wife. It was provided on 25-10-2018 along with Annexure-18 and the date of the complaint is seen as 20-02-2015. Meaning thereby that the memo of charge was framed on 25-09-2013, prior to complaint of Nita Kumari. Had there been any complaint, it would have been prior to the date of 25-09-2013 and not after the dated of 25-09-2013. Apparently, the memo of charge has been framed without any material.

45. He further submits that the inquiry has been conducted in violation of Rule 17 (12) of the CCA Rules, which provides that



the inquiry authority shall on receipt of notice for production of documents shall forward the same to the authority in whose possession the documents are kept and in terms of Rule 17 (13), on receipt of requisition, the authority in custody of the documents shall produce the same before the inquiry authority. The petitioner requested to provide the complaint of Nita Kumari on 08-09- 2018, (Annexure-16 of the writ application). But without providing the complaint of Nita Kumari, Nita Kumari and Ravindra Kumar were examined on 14-09-2018 and due to non-supply of her complaint, the petitioner could not cross examine Nita Kumari.

46. He further submits that charges have been proved by the Inquiry Officer and the Disciplinary Authority in violation of the guidelines issued in the case of **Roop Singh Negi Vs. The Punjab National Bank** reported in (2009) 2 SCC 570, wherein the Hon'ble Supreme Court has laid down that the departmental proceeding is a quasi judicial proceeding. The Inquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to be proved. In the present case also, the documents have been tendered but the same has not been proved by any of the witness. The Inquiry Officer revised his opinion and gave a finding that the matter is pending



before the Hon'ble Court but the Disciplinary Authority proceeded on the basis of same unproven materials.

47. The conduct of the Disciplinary Authority after submission of the inquiry report dated 24-12-2018 by the Conducting Officer, not proving the charge and keeping the matter subject to outcome of the case pending in the Hon'ble Court, is also not fair as he directed the Inquiry Officer to submit a report as per his own desire but when the Conducting Officer refused to do so, he issued note of disagreement. In terms of Rule 18 (2) of the CCA Rules, if the Disciplinary Authority was in disagreement with the finding of the Inquiry Officer, he could have directly issued note of disagreement. But first of all, he directed the Conducting Officer to prepare the report as per his own desire but when the Inquiry Officer refused to do so, he issued note of disagreement.

48. No charges are made out against the petitioner even in terms of note of disagreement, which can be shown by the following:-

(a) **Charge No.1** relates to forged caste certificate of Priyanka Rai. The caste certificate of Priyanka Rai has been found to be genuine and she has been reinstated back, Annexure-35 of I.A. No.1/2021.



(b) **Charge No. 2 to 6** are related to second marriage of the petitioner with Priyanka Rai, Priyanka Rai has specifically refused in her statement that she has performed marriage with this petitioner. The proof of marriage is the receipt from Baidyanath Dham Mandir which cannot be a conclusive proof of marriage of the petitioner with Priyanka Rai. This matter is still pending before the Family Court, yet the Disciplinary Authority has entered into this issue.

(c) **Charge No. 7 & 8** have not been proved by the Conducting Officer and the Disciplinary Authority has also not given any specific note of disagreement on these issues.

49. Learned counsel for the petitioner submits that this issue is covered by a judgment of this Court in **C.W.J.C. No.7206 of 2016 (Shankar Dayal Vs. The State of Bihar)**.

50. A counter-affidavit is filed on behalf of the respondent no.6 in which it is stated that the list of charges and the list of such witnesses by whom the articles of charges are proposed to be sustained has been already provided to the petitioner through letter no.2815 dated 28.09.2013. After receiving charge sheet by the Conducting officer, the petitioner submitted an application to the District Education Officer, Purnea that the running Departmental proceeding is against the departmental rule. The



application submitted by the petitioner was not signed by him, as it was his mala fide intention to interrupt the enquiry against him (Annexure- B to the Counter affidavit of respondent no.6).

51. The Enquiry officer submitted report to the District Program Officer. (Establishment), Purnea that he sought a show-cause to the teacher in proceeding (the petitioner) on charges framed against the petitioner, but the petitioner asked for more time to submit the answer. Thus the petitioner interrupted the enquiry always.

52. That the charges submitted by the witness Mrs. Neeta Kumari the first wife of the petitioner was through written document which has been submitted previously to the Court.

In Para (03) I, II & III of Bihar Govt. Employee Rule 1976, it is already declared that any Govt. employee can't marry to any other women whether the first wife is already alive. In this way the petitioner already violated the Bihar Govt. Employee Rule 1976, marrying to another women named Priyanka Roy.

53. He further submits that the Principal Judge, Family Court. Purnea has without departmental order allowed the petition of Neeta Kumari the first wife of the petitioner and an ex-parte decree dated 12.10.2012 passed in Matrimonial Case



no. 38/2002 was set aside and Matrimonial Case no. 38/2002 was restored and Matrimonial case no. 38/2002 was fixed on 07.10.2017 as case no. Miscellaneous Case no. 06/2013.

54. The petitioner also accepted the fact of his second marriage with Priyanka Roy in the PS Case no. 203/14 submitted by the petitioner himself regarding regular bail of his own.

55. That the petitioner filed a case to the Hon'ble High Court and prayed against his dismissal order and also submitted as Interlocutory application in CWJC No. 6845/2016 to quash his termination order. In that case Hon'ble Court passed an order that " However in view of the judgment of constitution bench in the case of the (**Managing Director ECIL v/s B. Karunakar**) reported in 1993(4) SCC 727 the court is constrained to direct the respondent to start a fresh proceeding from the stage of examinative departmental of the witness and conclude the departmental proceeding within a period of six month from the date of receipt / production of a copy of this order".

56. Lastly he submits that there is no infirmity in the departmental enquiry and the dismissal of the petitioner is in accordance with law.

57. Considered the rival submissions of the parties and



judgment cited by the parties and also perused the records. It is admitted fact that the petitioner has not given any document and name of the witnesses and the enquiry itself was conducted in violation of Rule 17 (12) of CCA Rules which provides that the inquiry authority shall on receipt of notice for production of documents shall forward the same to the authority in whose possession the documents are kept and in terms of Rule 17(13), on receipt of requisition, the authority in custody of the documents shall produce the same before the inquiry authority. The memo of charge was framed on 25.09.2013 on the basis of certain allegations levelled by the ex-wife of the petitioner but the petitioner was not provided with the complaint of his ex-wife. The same was provided on 25.10.2018 along with Annexure-18 and the date of the complaint is seen as 20-02-2015, meaning thereby that the memo of charge was framed on 25.09.2013 i.e. much before the complaint of Nita Kumari was filed.

58. In view of the foregoing discussions, the dismissal order dated 02.03.2019 (Annexure-1 of the writ application), Appellate order dated 17.05.2019 (Annexure-2 of the writ application) as well as revisional order dated 29.07.2020 (Annexure-32 of the writ application) is hereby quashed.



59. Petitioner shall be entitled to get all the consequential benefits including monetary benefits.
60. In the result, this writ application stands allowed.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	02.05.2024
Uploading Date	29.05.2024
Transmission Date	NA

