

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17753 of 2015

=====

Smt. Kanija Khatoon W/o Late Md. Shafi Ahmad Resident of Village - Mohani, Post - Mohani Sakrauli, Via- Raipur, P.S.- Nanpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through its the Commissioner-cum- Secretary, Human Resources Dept. Govt. of Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. The Regional Deputy Director of Education, Tirhut Commissionery, Muzaffarpur.
4. The Treasury Officer, Sitamarhi.
5. The District Education Officer, Sitamarhi.
6. The District Education Officer, Muzaffarpur.
7. The Head Master, High School Kharka, Sitamarhi.
8. The Head Master, Amiri High School, Kata, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Niraj Kumar
For the Respondent/s : Mr. Manish Kumar (Ac to Aag 6)

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

- 9 29-04-2024 1. The petitioner has filed the present writ application for quashing the order of punishment dated 08.06.2006 whereby he has been awarded punishment in a departmental proceeding of stoppage of three annual increments with cumulative effect and for the suspension period except subsistence allowance, nothing shall be paid. Further prayer is for quashing the order dated 04.03.2007 passed by the departmental appellate authority.
2. During the pendency of the writ application, the petitioner died and his wife has been substituted as a petitioner.



The petitioner was appointed as Assistant Teacher, Urdu, at Banshidhar High School, Aadapur, East Champaran on 13.10.1987. He was subsequently posted at High School Kharka, Sitamarhi. While he was posted at Kharka between 1992 to 1995, a sum of Rs. 77,000/- was withdrawn as a G.P.F. loan from the G.P.F. account of the petitioner allegedly on the basis of the application submitted by him. According to the petitioner, the total amount deposited in the G.P.F. account of the petitioner was Rs. 20,924/-. The petitioner was informed by the Head Master, High School, Kharka, namely Sri Chandeshwar Thakur that in collusion with other officials of Education and Treasury department, huge amount of illegal withdrawal from the G.P.F. account of various teachers have been made including the account of the petitioner. The details of the embezzled amount is mentioned in paragraph 10 of the writ application which is mentioned hereinbelow:-

MOT/EDN No. 4057	Sanctioning Authority	Letter No.	Date	Amount
"	DEO Sitamarhi	1519	23.06.93	12,000=00
"	RDD Muzaffarpur	13498	31.12.94	20,000=00
"	DEO Sitamarhi	506	01.03.94	10,000=00
"	RDD Muzaffarpur	3660	15.05.95	20,000=00



"	DEO Sitamarhi	1466	10.06.94	15,000=00
---	------------------	------	----------	-----------

3. The petitioner thereafter, wrote to the District Magistrate, Sitamarhi, G.P.F. Officer and Finance Department, Government of Bihar to inquire into the matter properly. The petitioner along with other teachers sent several reminders to the District Magistrate and D.E.O., Sitamarhi, between 08.09.1997 and 10.09.1997. When no action was taken, the petitioner along with other affected persons filed a writ petitioner bearing C.W.J.C. No. 3757 of 1998 seeking a direction to the authority to inquire into the matter related to embezzlement of three G.P.F. Accounts on the basis of fabricated documents with forged signatures.

4. Learned counsel for the petitioner submits that during pendency of the writ application, the petitioner was being regularly threatened by the then District Education Officer, Sitamarhi, namely Shyam Narayan Kunwar (who has been made accused in the First Information Report) to withdraw the writ application or to face untoward happening like dismissal of service etc. The F.I.R. is still pending and no progress has taken place in that. The writ petition was disposed on 18.09.1998 on the basis of the fact that F.I.R. was lodged by the authority.



Thereafter, preliminary inquiry was conducted and a report was submitted by the District Education Officer, Sitamarhi, before Secretary Secondary Education, Bihar, Patna, with a recommendation to frame charges against the teachers, clerks and other officials of the concerned districts.

5. In pursuance of the preliminary inquiry, a memo of charge was served upon the petitioner on 10.11.2000 with six charges regarding withdrawal of Rs. 77,000/- as a loan from the G.P.F. Account of the petitioner between June 1992 to October 1995 whereas only Rs. 20,924/- was found deposited in the account of the petitioner. The petitioner submitted his reply on the charges on 04th January, 2001. In the meanwhile, the petitioner was suspended on 10th January, 2000. The suspension was revoked on 01.08.2006. The inquiry report was submitted on 05.11.2001 holding the charges proved against the petitioner and thereafter, the petitioner was asked to submit second show cause which was submitted by him on 11.02.2006. The disciplinary authority passed the order of punishment of stoppage of three annual increments with cumulative effect and non-payment of any amount during the suspension period except the subsistence allowance. The appeal filed by the petitioner was dismissed by the same authority.



6. Learned counsel for the petitioner further argued that in the memo of charge, there is no mention of list of witnesses and the list of documentary evidence proposed to be filed during the course of inquiry. The inquiry was held in a single day on 4th July, 2001 and on the basis of the reply filed by the petitioner as well as the presenting officer, the Inquiry Officer arrived at the conclusion that the charges against the petitioner has been proved. In the departmental inquiry, the documents were not proved by the department and the department also did not examine any witness to prove the charges against the petitioner. In fact, no oral inquiry was conducted and the petitioner was also not given opportunity to produce his defense witness and/or documents in his defense. No document at all was produced in support of charges showing that the amount was embezzled by the petitioner. The so called application form allegedly submitted by the petitioner for the sanction of the loan amount from his G.P.F. Account has also not been produced during the course of inquiry. The alleged five loan amount granted to the petitioner in between 23.06.1993, 01.03.1994, 10.06.1994, 31.12.1994 and 15.05.1995 went into the account of the petitioner and there is no document to support the allegation that the petitioner has received the loan amount in



question. The inquiry report has been submitted on the *ipse dixit* of the Inquiry Officer and the entire inquiry report is based on no evidence. The same authority has acted as an appellate authority and passed the order in appeal filed by the petitioner upholding the punishment.

7. On the other hand, learned counsel for the State submitted that the memo of charge was served upon the petitioner and the procedure for departmental proceeding was followed. After submission of inquiry report and asking second show cause, the petitioner has been awarded punishment of stoppage of increment and non-payment of any amount during the period of suspension. He next submits that the Director, Secondary Education, has acted as an appellate authority on the direction of Commissioner-cum-Secretary of Human Resource Department, Government of Bihar.

8. I have heard learned counsel for the parties and have gone through the materials on record. From perusal of the memo of charge, it is clear that the memo of charge is not containing the list of documents and witnesses by which the department proposes to prove/sustain the article of charges.

9. Rule 17 Sub-Clause 3 of CCL Rules 2005 deals with procedure for imposing major penalties and says that



where it is proposed to hold an inquiry against a government servant under this Rule for imposing major penalties, the disciplinary authority shall cause to be drawn:-

(I) The equitation of misconduct or misbehavior as a definite and distinct article of charge.

(ii) A statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain:-

(A) A statement of all relevant facts including any admission or confession made by the government servant.

(B) A list of such document by which and a list of such witnesses by whom the articles of charges are proposed to be sustained.

10. On bare perusal of the memo of charge, it appears that list of the documents and list of witnesses by which the article of charges are proposed to be proved/sustained by the department is missing. Accordingly, on this ground alone, the departmental inquiry has vitiated.

11. In the judgment of **Brija Singh v. The State of Bihar reported in 2021 (4) PLJR 148**, this Court has taken note of the judgment of **State of Uttar Pradesh and Others v. Saroj Kumar Sinha, reported in (2010) 2 SCC 772** has held



that the Apex Court in the aforesaid judgment has defined the role of Inquiry Officer, who acts as a quasi-judicial authority while holding inquiry and is in a position of an independent adjudicator. His function is to examine the evidence presented by the department, even in absence of delinquent to see as to whether the unrebutted evidence is sufficient to hold the charges as proved.

12. In Anil Kumar v. Presiding Officer as reported in AIR 1985 SC 1121, the Hon'ble Supreme Court has held that an enquiry report with regard to a departmental enquiry conducted by the enquiry officer should not be based on the ipse dixit of the enquiry officer. It should show as to what are the charges levelled against the petitioner, how a departmental enquiry was conducted. What was the evidence that came on record, it should show analysis of the evidence and conclusion of the enquiry officer based on reason to show that the evidence that came before the Enquiry Officer was analyzed in the backdrop of the explanation submitted by the petitioner and he holds the delinquent employee guilty of the charges levelled against him. The Hon'ble Supreme Court in the aforesaid case holds that if the report of enquiry officer does not meet the aforesaid requirement of law, it is a total violation of the



principles of natural justice and based on such enquiry report, no punishment can be imposed upon a delinquent employee.

13. A Bench of this Court in the judgment passed in **Kumar Upendra Singh Parimar v. The State of Bihar, reported in 2000 (3) PLJR 10** has held that when an enquiry has been ordered by the disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.

14. In yet another judgment of this Court in **S.K. Verma v. The State of Bihar, reported in 2000(1) PLJR 116** it has been held that during the inquiry no witness was examined, as such, the charges against the petitioner cannot be said to have been proved. It is a well known principle that at the stage of inquiry the petitioner is entitled to be given a reasonable opportunity to cross-examine the witnesses who are produced to prove the charges. The petitioner also has a right to adduce evidence by producing witness.

15. In the present case, admittedly no witness has



been produced by the Presenting Officer and or any documentary evidence to prove the charges by examining the witnesses. The Inquiry Officer arrogated the role of Presenting Officer and proved the charges on the basis of opinion of the Presenting Officer and statement of defence of the petitioner.

16. The inquiry was conducted absolutely in perfunctory manner in a single day and the inquiry report was submitted by the Inquiry Officer based on his *ipse dixit* holding the charges as proved.

17. The Disciplinary authority has acted like a disciplinary authority as well as the appellate authority. This is unknown to law.

18. In the backdrop of the aforesaid discussion and the fact that during the course of inquiry, no oral enquiry was conducted, no witnesses was examined, no documents have been produced and proved, accordingly, in my opinion, the inquiry itself has vitiated. The Inquiry Officer has failed to discharge his duty as an independent adjudicator. Resultantly, I hold that the charges against the petitioner cannot be said to have been proved. There is gross procedural illegality in conducting the inquiry by the respondent/authorities.

19. Accordingly, order of punishment *vide* memo no.



1641, dated 08.06.2006, and consequential order of appellate authority as well as the inquiry report are hereby quashed. The legal heirs of the erstwhile petitioner is entitled to be paid all consequential and monetary benefits within three months. I order accordingly.

20. The present writ application stands disposed with the aforesaid observation and direction.

(Anil Kumar Sinha, J)

HarshPandey/-

U			
---	--	--	--

