

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8014 of 2019

Pradip Kumar Singh S/o Sri Moti Lal Singh Resident of Rasidpur, Khanpur,
P.S. Bath, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Director (Administration) -cum-the Additional Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Enquiry Officer-Cum-the then Director, Research and Training Department of Education, Govt. of Bihar, Patna.
4. The Presenting Officer-cum-the then Principal Zila Shiksha Evam Prashikshan Mahavidyalaya, Madhepura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Avanindra Kumar Jha
For the Respondent/s : Mrs. Binita Singh (Sc28)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV

Date : 08-05-2024

Heard learned counsel for the petitioner as well as
learned counsel for the State.

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

“(i) To hold and declare that the 'Memo of Charge' as contained in Memo No. 71 dated 03.02.2014, (Annex-4) was supplied to the Petitioner, without there being any evidence in support of the charges, which renders the Memo of Charge violative of Rule 17 (3), 17 (4) R/W 17 (6) of the Bihar Govt. Servant (Classification, Control and Appeal) Rules 2005, thus void ab-intio.

(ii) To hold and declare that, the Enquiry Report, (Annex-11) vide Letter No. 236 dated 24.04.2014 was submitted without conducting any enquiry in accordance with the Bihar Govt. Servant (Classification, Control and



Appeal) Rules 2005, and finding of the Enquiry Officer, whereby and where under the Petitioner has been held guilty of the charges, without considering any of the submissions of the Petitioner, by a cryptic and non-speaking statement, is arbitrary, discriminatory, malafide, and unsustainable in the eye of law.

(iii) To hold and declare that, the Order of Punishment (Dismissal from Service) as contained in Memo No. 201 dated 12.3.2018 {Ann-13} is a non-speaking order & also suffers from defect of non-consideration of submissions of the Petitioner. Since, the said order has not at all considered submissions of the Petitioner as contained in his reply to Show Cause Notices, hence said order of punishment, is in the teeth of the relevant provisions of Bihar Govt. Servant (Classification, Control and Appeal) Rules 2005 & fit to be set aside by this Hon'ble Court.

(iv) To hold and declare that, the order of the Reviewing Authority as contained in Memo No. 708 dated 01.10.2018, (Ann-15) whereby and where under the Review Application of the Petitioner has been rejected without applying independent judicious (quasi) judicial mind, only on the basis of conjecture and surmises, by a cryptic order, and, without taking into account the submissions in entirety, is bad in law hence fit to be set aside by this Hon'ble Court."

3. The brief facts of the case is that, while the petitioner was posted as Principal of the District Education & Training Institute, Madhepura at Madhepura, in an alleged trap case, on 16.07.2013, he was allegedly caught by a team of vigilance, while receiving a sum of Rs. 9000/-. For the said Trap Case, a F.I.R., bearing Vigilance P.S. Case No. 38 of 2013 dated 17.07.2013, was lodged against the petitioner, and he was put under custody. In consequential repercussions, he was placed under suspension, initially vide Memo No. 373



dated 06.08.2013 and, again on his release from custody, vide Memo No. 45 dated 24.01.2014, a departmental proceeding has been initiated against him and Memo of Charge 'Prapatra - Ka' was issued vide Memo No. 71 dated 03.02.2014. The documents annexed thereto, goes on to show that in support of the charge, a copy of the F.I.R. has been served upon the petitioner, though on the memo of charge, it has been mentioned that evidence consists total 18 eighteen pages but, actually the complete set of (so called) evidence were not served upon the Petitioner, even later on in-spite request to supply the same, which is in violation of Bihar State Government CCA Rules, 2005

4. Learned counsel for the petitioner submits that in pursuance to the said memo of charge/departmental proceeding, the Inquiry Officer vide his Letter No. 79 dated 11.02.2014, directed the petitioner to appear before him on 17.02.2014 along with the show cause reply (Spashtikaran). Since the Memo of Charge was not supplied to the petitioner by the said date (17.02.2014), upon seeking extension of time, finally, the petitioner filed his reply/written statement dated 25.02.2014, refuting/denying the allegations so leveled against him.



5. Learned counsel for the petitioner further submits that in his written statement the petitioner has categorically stated that, the complainants, namely, Tarun Kumar and Rishiraj Singh, both were knowing fully well that, so long the petitioner, is at the helm of affairs, they could not succeed in getting admission/up-gradation to next year of Training Session, as they were far below in the requisite overall attendance of 85%, in view of the direction of the department, vide Memo No. 807 dated 18.10.2012, without which they could not be allowed to appear in the final examination. Thus, the said two persons, namely, Tarun Kumar and Rishiraj Singh, (having 54.59 % & 59.77% respective attendance) by hatching a conspiracy with help inside the vigilance department, removed the Petitioner from the helm of affairs. In fact, in any circumstances, even if the said two complainants could have secured 100% attendance in the 2nd year of the academic session, they could not have completed the requisite 85% of attendance, and they could not have been allowed to appear in the final examination.

6. Learned counsel for the petitioner further submits that the Inquiry Officer, vide his Letter No. 132 dated 11.03.2014, directed the Presenting Officer to produce the evidence before



him, and fixed the next hearing date on 21.03.2014. No enquiry proceeding whatsoever, was conducted and the petitioner has been asked only to file his appearance before the Enquiry Officer. And thereafter no further dates were fixed and/or communicated to the Petitioner. The Petitioner was awaiting the next communication for enquiry proceeding / hearing, suddenly a 2nd Show Cause Notice as contained in Letter No. 305 dated 05.06.2014, along with the Enquiry Report as contained in Letter No. 236 dated 24.04.2014 came to be served to him.

7. Learned counsel for the petitioner further submits from bare perusal of the Enquiry Report (Annexure-11) it is evidence that the Inquiry officer has himself admitted that no evidence & witness has been led before him by the prosecution and even the so called witnesses to the vigilance are also not examined. He further submits that no witness or any document was produced before the proceeding.

8. When the petitioner received the second show cause notice (Annexure-10), he filed a reply to it and refuted the charges on the basis of cogent evidence and submissions. However, ignoring the specific submissions and evidences adduced by him, the order of punishment (Dismissal from



Service), as contained in memo no.201 dated 12.03.2018 (annexed as Annexure-13 to the petition), came to be passed by the Disciplinary Authority. From bare perusal of the order of punishment, it is evident that, while passing the said order of punishment none of the submissions of the petitioner has been taken note of and considered and no independent mind was applied by the disciplinary authority.

9. Learned counsel for the petitioner further submits that from a conjoint reading of the F.I.R. of the Vigilance case, written statements of the petitioner and the enquiry report (Annexure-11) as well as the order of punishment (Annexure-13), it transpired that, the definite stand of the petitioner that,

(i) the pre trap Memo dated 15.07.2013 is highly doubtful since the so called witness have put their signature and marked the date as 16.07.2017.

(ii) petitioner has had not even seen the so called recovery currency notes.

(iii) post trap memo is not trustworthy, since it was signed by a person (Amit Kumar) and he was absent from the training centre on 16.07.2013.

(iv) the witnesses of vigilance case were denied illegal promotion in the next year/session, on account of low



attendance, by the petitioner, hence they were interested in ousting him.

(v) vigilance witness/complainant, namely Tarun Kumar was history sheeted criminal and he was in custody for several months.

(vi) there have been clear fabrication in complaint & pre-trap verification dated 08.07.2013 and on 15.07.2013, on said date, the witness/complainant was present in classroom.

(vii) no real independent witness was examined, in fact some other persons who were present in the school on the said date have denied the knowledge of the incident.

(viii) even the presenting officer, vide annexure 12/12 has stated that illegal money transaction has not been proved.

have not been considered at all, either by the enquiry officer, or by the disciplinary authority in the final order of punishment. There has been complete absence of application of independent mind, as required by the relevant provisions of the CCA Rules, 2005.

10. Learned counsel for the petitioner further submits the even the Principles of natural justice has been violated. The



order of disciplinary authority is a non-speaking order and in the name of enquiry/departmental proceeding sham type of paper work has been completed.

11. He relied upon the judgment of the Apex Court in the case of **Markand C. Gandhi vs. Rohini M. Dandekar** in Civil Appeal No.4168 of 2008 decided on 17.07.2008, which highlights the inadequacy of non-speaking orders:

4. The impugned order runs into 23 pages. Up to the middle page 10, the Committee has referred to cases of the parties; from middle page 10 to middle page 11, issues have been mentioned; from middle of page 11 to the top of page 22, the Committee has referred to the evidence, oral and documentary, adduced on behalf of the parties without discussing the same and recording any finding whatsoever in relation to the veracity or otherwise of the evidence; and thereafter disposed of the proceeding which may be usefully quoted hereunder: We have gone through the records. The issues were framed on 18.08.1990. Issue no.1 relates to a threat given by the respondent to the complainant on 08.06.1977. This issue is not related to the professional misconduct and in this regard the complainant has not submitted any documentary evidence to prove her stand. As far as the issue No.2 is concerned, this is a very important issue. The complainant has submitted document in support of her contention and proved the issue. This fact cannot be denied by oral version, as there is documentary record. As far as the issue no.3 is concerned, this is also proved by the complainant by her evidence. Issue no.4 relates to the certificate issued by the Respondent. This has also been proved by the complainant by documentary proof



which is on record. Likewise Issue No.6 is also proved by documentary proof. Issues Nos.6 to 7 relate to one Mr. Vora, architect and builder and Mr. B.S. Jain and the Respondent. The main issue in this controversy is issue no.8 i.e., whether the Respondent is guilty of professional misconduct or other misconduct. In this respect, it is the admitted position before the Committee that some documents were already on record and retained by the Respondent and the certificate issued by the Respondent with regard to the property in question. It is also admitted position that in this matter a compromise letter was filed by the parties earlier. We have heard the arguments and we have also perused the documents. The complainant has proved her allegations made in the complaint against the respondent. The allegations made are very serious. We are of the opinion that the respondent has committed professional misconduct and thus we hold him guilty of professional misconduct and suspend him from practice as an advocate before any Court or authority in India for a period of five years and we also impose a cost of Rs.5,000/- to be paid by him to the Bar Council of India which on deposit will go to the Advocates Welfare Fund of the Bar Council of India. If the amount of cost is not paid within one month from the date of receipt of this order, the suspension will be extended for six months more.

12. He further submits that in an identical matter in C.W.J.C. No.286 of 2016, this Court has been pleased to rely and quote the order of the Apex Court in the case of **Roop Singh Negi vs. Punjab National Bank & Ors., reported in (2009) 2 SCC 570.**

13. Feeling aggrieved by the order of the disciplinary



authority, petitioner had filed a review application before the reviewing authority in sum and substance on the following grounds:-

- (i) unsustainable and void memo of charge.
- (ii) No evidence
- (iii) not conducting the regular departmental enquiry.
- (iv) violation of Principle of Natural Justice
- (v) non-consideration or submission of the petitioner
- (vi) non-application of independent mind while passing the order of punishment
- (vii) non-speaking order and
- (viii) departmental enquire in complete contravention of the relevant provisions of Bihar Govt. Servant (Classification, Control and Appeal) Rules 2005.

14. The review application filed by the petitioner was also dismissed by a non-speaking order and without considering the submissions made in Annexure-15 of the writ application.

15. By the order dated 01.04.2024, this Court directed the State to produce the relevant documents relating to the departmental enquiry and, accordingly, by way of counter-affidavit, State has produced the original record of the Departmental Proceedings conducted against the petitioner



and in this connection he has stated that nothing is available on the page no.38, 39 and 42 in the records which reflects that the petitioner was given sufficient time to examine and cross-examine the witnesses during the departmental proceeding.

16. From perusal of page no.103, 104 and 105, as contained in the original records with respect to the departmental proceeding, in question, it is evident that the statements contained in the aforesaid pages have been considered by the disciplinary authority before passing the punishment order.

17. He further submits that there is no procedural lapse in conducting the departmental proceeding and hence the writ application deserves to be dismissed.

18. Having heard learned counsel for the parties and after going through the materials available on record, it appears that the State has not produced any document to show that the petitioner has examined the witnesses and this fact is also admitted by the State and it further appears that no record is available to show that the petitioner has cross-examined the witnesses. The enquiry report also indicate that Inquiry officer himself admitted that no evidence and witness was led before him by the prosecution and even so called witnesses to the



Vigilance case were also not examined.

19. In view of the discussions made herein above, the order of punishment and dismissal from service as contained in memo no.201 dated 12.03.2018 (Annexure-13 to the writ application), the order of the reviewing authority as contained in memo no.708 dated 01.10.2018 (Annexure-15 to the writ application) and enquiry report vide letter no.236 dated 24.04.2014 are not sustainable and hence set aside.

20. In the result, this writ application is allowed.

21. The respondents are directed to re-instate petitioner in service with all consequential benefits.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	22.04.2024
Uploading Date	08.05.2024
Transmission Date	NA

