IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19680 of 2015

==

Hrishikesh Tiwari son of Late Shiv Dhar Tiwari, resident of Mohalla-Koirpurwa, Post, Police Station and District- Buxar.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna. null null
4. The Regional Deputy Director of Education, Patna. null null
5. The District Education Officer, Patna. null null
6. The District Programme Officer Establishment, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar
	:	Mr. Binod Bihari Sinha
	:	Mr. Ajay Dutt Mishra
	:	Mr. Amanjeet Chaudhary
	:	Mr. Anirudh Prasad Sinha
For the Respondent/s	:	Mr. Gautam Bose- Aag8

==

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

9 12-08-2024

1. Learned counsel for the petitioner seeks permission to withdraw the I.A., bearing I.A. No. 01 of 2024, with a liberty to file a fresh writ application for the prayer made in the I.A.

2. Permission is granted with the liberty aforesaid.

3. The petitioner has challenged the order of punishment dated 28.04.2015 passed by Director, Secondary Education, Patna, and the consequential order of appeal passed by Principal Secretary, Education Department, Government of Bihar, dated 17.07.2015, whereby the punishment of forfeiture of salary except the subsistence allowance during the suspension period and recovery of interest at the rate of 12 % per annum against the amount of Rs. 11,62,000/-, has been awarded.

4. At the relevant point of time, the petitioner was posted as Headmaster in Rajkiyakrit High School, Nadwan, Dhanarua. The departmental proceeding was initiated against him and memo of charge, dated 25.02.2013, having five charges was served, however, the charges were amalgamated and three charges were framed against the petitioner. Charge no. 1 is that in the financial year 2011-12, an amount of Rs. 16,89,500/- and in financial year 2012-13, an amount of Rs. 11,62,000/- were withdrawn by the petitioner with an intention to defalcate the said amount by keeping the same in his personal account. The amount was meant for distribution of cycle, uniform and educational excursion of the students. Charge no. 2 is that in the financial year 2011-12 and 2012-13, the petitioner withdrew excess amount for purchase of cycle and uniform after showing excess number of students than were admitted in the school which is in nature of severe irregularity. The Charge no. 3 is that the petitioner did not provide the admission register pursuant to the demand made by District Education Officer and further, the petitioner was absent from the school without any information and thereby has violated the Government Servant Conduct Rules, 1976.

5. The petitioner submitted his reply denying the charges stating that the school was not having any account in the State Bank of India and as per the treasury, the money was to be transferred only in the State Bank of India. Since, the petitioner was having his salary account in the State Bank of India, as such, in the interest of school and its students, the petitioner got the amount in his account.

6. The Inquiry Officer exonerated the petitioner from the charges except charge no. 1. The Inquiry Officer found that the petitioner has committed financial irregularity for the time being and for the period money was kept in his account. The Inquiry Officer has not found the charge of defalcation as proof by arriving at the finding that the petitioner submitted the utilization certificate after distributing the materials to the students. The disciplinary authority, after considering the second show cause of the petitioner, passed the order of punishment for the proved charges of financial irregularity by which the petitioner was directed to refund interest at the rate of 12% upon the amount which was kept in his personal account and further, the petitioner shall not be paid any amount except the subsistence allowance for the period he was under suspension. A separate proceeding under Section 43(b) has been initiated by the respondents which the petitioner has challenged by an I.A. which has been withdrawn with liberty to file a fresh writ application.

7. Learned counsel for the petitioner submits that Inquiry Officer has not followed the established procedure for holding departmental inquiry inasmuch as no oral inquiry was conducted and no evidence was produced against the charges by the Presenting Officer and or no document was exhibited during the course of inquiry. However, the Inquiry Officer found the charges against the petitioner not proved and against the charge no. 1 of defalcation, the finding of the Inquiry Officer is that the petitioner has not committed any defalcation but it was temporary financial irregularity/embezzlement of the amount. Temporary financial irregularity was not the charge levelled against the petitioner.

8. Learned counsel further submits that insofar as the order of punishment of non-payment of salary for the period of suspension except the subsistence allowance only, the same cannot be imposed as a punishment in the departmental proceeding unless prior notice, in this regard, for withholding any payment of the suspension period, is served upon the delinquent. He relies upon the judgment of **Indu Prakash Sao v. The State of Bihar and Others Reported in 2013 Vol. 3 PLJR Page 1.**

9. On the other hand, learned counsel for the State submits that on the complaint made by teaching and non-teaching staffs of the school, the memo of charge was served upon the petitioner and the Inquiry Officer found the charge no. 1 as proved and after serving second show cause, the order of punishment was passed against the petitioner and subsequently, appeal has been dismissed after giving opportunity of hearing to the petitioner.

10. I have heard learned counsel for the parties and perused the materials available on record. Charge no. 1 says that petitioner withdrew the amount from the treasury and with an intention to defalcate the amount, deposited the same in his personal account which is against the prescribed conduct of the government officer. Altogether, three charges were levelled against the petitioner out of which only charge no. 1 is said to be proved and other two charges were not proved during the course of inquiry. Upon perusal of the inquiry report with regard to charge no. 1, the Inquiry Officer has come to the conclusion that after analyzing the documents, it is evident that money has not been defalcated by the petitioner. However, it has further been concluded that the petitioner has committed financial irregularity for the relevant period amount was kept in his account. The charge no. 1 was regarding defalcation of government money which has not been proved, however, the Inquiry Officer has deviated from the charge and has given his opinion regarding the temporary financial irregularity and the disciplinary authority has passed the order of punishment on the proved charge of financial irregularity for the period money was kept in his personal account.

11. It is trite law that the order of punishment cannot be passed unless the specific charge is served upon the delinquent. In the present case, the charge is of defalcation but the order of punishment is based upon the finding of the Inquiry Officer that the defalcation is not proved but financial irregularity for the relevant period is proved. Admittedly, financial irregularity for the relevant period done by the petitioner was not the charge framed against him. As such, I find that order of punishment is based upon the charge which was not served upon the petitioner. Furthermore, in the present case, no witness was examined by the department and no documents were produced by the management during the course of inquiry.

12. Insofar as the punishment imposed upon the petitioner withholding payment of salary for the suspension period, this Court in **Indu Prakash Sao v. The State of Bihar and Others (supra)** has held that a show cause is necessary to be given to the delinquent before imposing such punishment. 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.

13. In the present case, 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. As such, in my opinion, the second punishment of forfeiture of salary for the suspension period is not sustainable. With regard to the first punishment, it is the case of the petitioner that the interest, which incurred on the said amount which was in the account of the petitioner, has been deposited by the petitioner in the State Exchequer/School Fund.

14. Considering the discussions held hereinabove, the order of punishment, dated 28.04.2015 passed by Director, Secondary Education, Patna, and the consequential order of appeal passed by Principal Secretary, Education Department, Government of Bihar, dated 17.07.2015 are set aside.

15. Accordingly, the present writ application is disposed to the extent indicated above.

(Anil Kumar Sinha, J)

HarshPandey/-

U			