

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19274 of 2015

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Krishna Ram son of Late Basudeo Ram, resident of Village- Khardiha, P.S.-
Haider Nagar, District- Palamu Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The Regional Deputy Director of Education, Magadh Division, Gaya.
5. The District Education Officer, District- Aurangabad.
6. The District Education Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Dubey, Advocate
For the Respondent/s : Mr. Kumar Manglam, AC to SC-24

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 09-01-2024

Learned counsel for the petitioner is permitted to add the District Education Officer, Gaya as respondent no.6 during course of the day.

2. Heard Mr. Sunil Kumar Dubey, learned counsel for the petitioner and Mr. Kumar Manglam, learned counsel appearing on behalf of the State.

3. The present writ petition has been filed for the following reliefs;

“I. A certiorari setting aside the order contained in Memo No. 393 dated 17.06.2015 passed by the Respondent



Appellate Authority Principal Secretary in Appeal Case No. 25 of 2015 filed on behalf of this petitioner, whereby and whereunder the Respondent Appellate Authority has in a very illegal, casual and mechanical manner rejected the Appeal of the petitioner affirming in a very illegal order of dismissal passed by the Respondent Disciplinary authority Director as contained in Memo No. 144 dated 25.02.2015 in a very arbitrary and extraneous manner exceeding its jurisdiction, which cannot sustain in the eye of law.

II. A further certiorari setting aside also the order passed by Respondent Director as contained in Memo No. 144 dated 25.02.2015 whereby and whereunder the Respondent Disciplinary authority has in a very illegal, arbitrary, extraneous and without jurisdiction manner got a already concluded and culminated in exoneration of petitioner in departmental proceeding, started a fresh and inflicted a major punishment or dismissed upon the petitioner, which is very much in the teeth of well established preposition of law and several judicial pronouncements of this Hon'ble Court as also of Hon'ble Apex Court.

III. A Mandamus commanding and directing the Respondents concerned to reinstate the petitioner in service from the date of his dismissal alongwith all its consequential benefits as the petitioner is going to retire on 31.03.2016.

IV. And/or for issuance of any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case."

4. Learned counsel for the petitioner submits



that when the petitioner was posted as Block Education Extension Officer in Banke Bazar a Vigilance Case No. 50 of 2011 was instituted against him under Section 7/13(2) r/w Section 3(D) of the Prevention of Corruption Act. Allegation in the FIR is that the petitioner has taken bribe of Rs.5,000/- from one Chandra Kant Verma in the name of making contribution in opening of the bank account, thereafter the petitioner was sent to jail. The respondent no.3 issued a Memo No. 896 dated 03.08.2011 by which the petitioner was put under suspension in contemplation of the departmental proceeding. Thereafter, the petitioner was released on bail. The petitioner submitted his joining before the District Education Officer, Gaya on 26.12.2011 which was accepted and the suspension of the petitioner was revoked w.e.f. 26.12.2011.

5. Learned counsel for the petitioner further submits that the petitioner was again put under suspension w.e.f. 26.12.2011 under rule 9(3)(ii) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 on the ground that Vigilance P.S. Case No.50 of 2011 was under investigation against the petitioner. Thereafter, vide order dated 08.05.2012 as contained in



Memo No. 679 issued under the signature of the respondent no.3 a departmental proceeding was initiated against the petitioner as per Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 for which charges were also framed against the petitioner and '*prapatra K*' was issued. The Regional Deputy Director of Education, Magadh Division, Gaya was appointed as conducting officer whereas the District Programme Officer, Gaya was appointed as Presenting Officer and petitioner was asked to submit his explanation.

6. The petitioner submitted his explanation dated 06.06.2012 and 06.09.2012 before the competent authority. From bare perusal of the enquiry report it is evident that the charges have not been proved against the petitioner and thereafter the enquiry officer recommended the case of the petitioner before the disciplinary authority to exonerate the petitioner from the alleged charges and opined that the departmental proceeding may be concluded. It was also observed that the matter will be effected by the outcome of the criminal case pending before the learned Court of Vigilance at Patna.

7. Pursuant to the recommendation of the



enquiry officer the respondent no. 3 who is the disciplinary authority accepted the recommendation of the enquiry officer and accordingly a final order has been passed by which the suspension of the petitioner was revoked and he has been asked to join the duty as a Headmaster in Government Basic Middle School, Haspura under Aurangabad District. From bare perusal of the order dated 08.01.2013, it transpired that it has been recorded that a fresh case will be taken on the basis of the outcome of the pending vigilance case and it has been ordered that the departmental proceeding has been terminated against the petitioner and such order was passed after due approval of the competent authority (i.e. respondent no.2).

8. Learned counsel for the petitioner further submits that all of a sudden the petitioner has received a Memo No. 667 dated 29.05.2014 issued under the signature of the respondent no.3 by which the petitioner was again put under suspension with immediate effect under Rule 9(i) (c) of the Bihar Government Servant (Classification, Control, Appeal) Rules, 2005 for the same charges regarding which earlier departmental proceeding was initiated and charges have not been found proved and



accordingly proceeding has been concluded. Learned counsel for the petitioner submits that in view of the aforesaid whether the impugned order is said to be justified in view of the facts and circumstances of the case and the judgment pronounced by the Division Bench of this Hon'ble Court reported in **2015(3) P.L.J.R. 243 (Md. Quasim Ansari Vs Union of India and others)**, paragraph nos.11 & 12 which is quoted hereinbelow;

“11. Having considered the matter, in our view, we have to accept the view as submitted by Mr. Giri. The reason is simple. There has to be finality to the proceeding. Merely because the disciplinary authority changed does not vest the disciplinary authority who exercises statutory power to review matters which were otherwise closed at his level. As noticed above, the disciplinary authority i.e. the Commissioner of Central Excise, Patna was well within the jurisdiction to pass a final order when he formed an opinion and given reasons for it and communicated the same to the Vigilance Department for a second stage advice. In that letter itself he stated that having gone through the report of the Inquiry Officer, which was based on evidence, he had no reason to disagree. There was nothing more to write. Upon this, the Vigilance repeatedly is saying that no reasons have been given which is not understandable at all. What more reasons were required to be given. The disciplinary authority had clearly



stated that he had agreed with the reasons and the findings of the Inquiry Officer and sent the Inquiry Officer's report to the Vigilance. Both these were to the Vigilance still the Vigilance kept pursuing the parties that the views of the disciplinary authorities were not with them. At this stage, petitioner was transferred to the jurisdiction of Commissioner Central Excise, Ranchi. Can the Commissioner Excise, Ranchi now review the matter and change the view? In our opinion, he cannot. He is bound by what has happened earlier. There was no direction from the Vigilance to reopen the case or reassess or review the matter. Once the Commissioner had taken a decision in the matter accepting the enquiry report which effectually exonerated the petitioner then the incumbent in the office or the changed disciplinary authority cannot recheck the decision of the earlier disciplinary authority and take a different view of the matter. There has to be finality. The finality comes from Rule-15(2) of CCS Rules. It gives discretion to the disciplinary authority to differ or, upon differing, issue a show cause and proceeds to punish but that itself is when the Inquiry report is submitted.

12. Here the facts are clear. The enquiry report exonerating the petitioner having been submitted, the disciplinary authority, the Commissioner accepted the same and communicated it to the Vigilance. In our opinion, that was the end of the matter. So far as the disciplinary authority is concerned, the matter would have been different. If the Vigilance in the second stage advice



required the disciplinary authority to reconsider the matter but that was never advice of the Vigilance. Thus, merely because petitioner was transferred from Patna jurisdiction to Ranchi jurisdiction does not give the new disciplinary authority jurisdiction to review and reopen the matter which had been closed by the earlier Commissioner. As we have noted above, there has to be finality. If what has been done is permitted then it would be unending because let us assume that thereafter the petitioner would be transferred to a third jurisdiction, can the disciplinary authority there, reopen the matter and exonerate the petitioner. Certainly that can never be intended. Thus, in absence of any directive from the Vigilance to reconsider the matter, the Commissioner, Central Excise, Ranchi could not have reconsider the matter and taken a different view. That being the position in law, we are unable to sustain the order of the Central Administrative Tribunal of Patna Bench passed in O.A. No. 511 of 2013 nor can we sustain the second show cause for imposition of penalty holding petitioner guilty upon review of the decision of the earlier Commissioner. They are all accordingly set aside.”

9. Learned counsel for the State on the basis of the counter affidavit has vehemently opposed the prayer of the writ petitioner on the ground that there is no infirmity in the impugned order and the proceeding was initiated in accordance with Rule and petitioner may participate in the proceeding but fairly submitted that on the basis of the



instructions received from the department that the present impugned order has been passed inadvertently.

10. Considering the aforesaid facts, the order dated 17.06.2015 contained in Memo No. 393 as well as order dated 25.02.2015 contained in Memo No.144 are hereby set aside. During the pendency of the present writ petition, the petitioner was retired w.e.f. 31.03.2016, therefore, the respondents are directed to pay all the consequential benefits to the petitioner within a period of three months from the date of production of the receipt/copy of this order.

11. The writ petition is allowed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024
Transmission Date	NA

