

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10437 of 2014

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Lal Babu Yadav S/o Late Mukh Lal Yadav Resident of Village - Katai Tikar,
P.O. P.S. Bhatpur Rani, District - Deoria, Uttar Pradesh, at present Incharge
Headmaster Assistant Teacher Gandhi Samarak Uccha Vidyalaya, Bhore,
Gopalganj, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Saran Division, Chapra.
5. The District Education Officer, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Kumar Singh

For the Respondent/s : Mr.Md. N. Hoda Khan

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 29-03-2024

1. Initially the petitioner filed the present writ application for quashing the order of suspension dated 10.04.2014 bearing Memo No. 1295 and for quashing the memo of charge dated 02.04.2014, however, during pendency of this writ application the petitioner was awarded punishment in the departmental proceeding and the order of punishment dated 30.06.2015 and the order passed by the appellate authority dated 01.03.2016 have also been challenged by the petitioner by way of I.A. No.



7675 of 2016.

2. Brief facts of the case is that the petitioner was working as an Assistant Teacher in Gandhi Smarak Uchch Vidyalaya, Bhore, Gopalganj. On 31.07.2011 the regular Headmaster of the School retired and the petitioner being the senior most teacher of the School was given the charge of the Headmaster on 31.07.2011, and thereafter, he started discharging his duties as In-charge Headmaster.

3. In the meanwhile, one Assistant Teacher of the same school namely, Krishna Prasad Kushwaha was promoted on the post of Headmaster on 21.08.2012 and was posted at Raj Narayan Smarak Pariyojna Balika Uchch Vidyalaya, Bhore, Gopalganj. Later on, by an order issued under the signature of Director, Secondary Education dated 12.12.2012 the transfer order of the promoted Headmaster was modified and he was directed to take charge of the Headmaster of the same School where the petitioner was working as Incharge Headmaster.

4. The petitioner filed a representation dated 19.12.2012 to the authorities concerned impressing upon them that the petitioner is the senior most teacher working in the School and was given the post of In-charge Headmaster, as such, the promoted Headmaster may be shifted to some other School,



however, the representation filed by the petitioner did not find favour with the authority and the petitioner became ready to hand over charge in favour of the promoted Headmaster but he refused to take charge from the petitioner. Information to this effect was sent by the petitioner to the superior authorities i.e. on 20.07.2013 to the District Education Officer, Gopalganj and on 24.07.2013 to the Regional Deputy Director of Education, Saran Division, Chapra.

5. The petitioner was suspended on 10.04.2014 in contemplation of departmental proceeding and memo of charge dated 02.04.2014 served upon him. Suspension as well as initiation of departmental proceeding against the petitioner is based mainly upon the charge that the petitioner did not hand over the charge of Headmaster to Krishna Prasad Kushwaha and hence created hindrance in the functioning of the school and further complete charge including financial registers, attendance registers and other registers were not handed over by the petitioner in favour of the promoted Headmaster. Basically, charge against the petitioner was of insubordination.

6. Mr. Rajeev Kumar Singh, learned counsel for the petitioner argued that the memo of charge does not contain list of witnesses as required under Rule 17 of the Bihar Government



Servants (Classification, Control & Appeal) Rules 2005. In support of his argument he relies upon a judgment of this Court reported in 2024(1) BLJ 352 Sudheshwar Sah vs. State of Bihar & Ors. especially paragraph no. 28 and paragraph nos. 4, 6, 7, 8, 9 & 10 of Division Bench judgment of this Court reported in 2024(1) BLJ 486 Nageshwar Sharma vs The State of Bihar to bring home the point that as per Rule 17 of the Bihar CCA Rules the memo of charge must contain the list of witnesses.

7. According to the petitioner no oral enquiry was conducted, no date was fixed by the Enquiry Officer and no document was exhibited or produced by the Presenting Officer during the course of enquiry. In fact, no date of hearing was fixed by the Enquiry Officer. The Presenting Officer did not produce any evidence in support of the charges. The enquiry report is cryptic in nature and was submitted in violation of the established procedures for holding departmental proceeding and the rules prescribed thereof. The disciplinary authority did not consider the reply to the second show cause submitted by the petitioner raising all these points. The appellate authority also failed to consider and appreciate the established procedures for holding departmental proceeding and did not take into consideration the memo of appeal in which the petitioner has



taken the point that departmental proceeding was conducted in complete violation of the procedures established by law. At the end, learned counsel for the petitioner submits that respondent authorities have unnecessarily withheld the salary of the petitioner since December, 2012.

8. On the other hand, learned counsel for the State submits that in the impugned order the disciplinary authority has taken note of the conduct of the petitioner that the petitioner despite repeated orders from the superior authority did not hand over charge to the promoted Headmaster and thereby has committed gross misconduct. The act of the petitioner is of insubordination. Accordingly, he defends the order of punishment passed against the petitioner by the disciplinary authority.

9. I have heard learned counsel for the parties and have gone through the materials on record. From perusal of the memo of charge it appears that two charges were framed against the petitioner. Charge No. 1 is that the petitioner disobeyed the order of superior authority and did not hand over entire charge of Headmaster in favour of the promoted Headmaster posted in the same School. 2nd charge relates to the first charge and says that financial registers, order registers, attendance registers and other documents were not handed over by the petitioner to the



concerned Headmaster. The memo of charge contains certain documents as a piece of evidence to be produced during departmental proceeding but no list of witnesses are given in the memo of charge.

10. The petitioner while challenging the order of punishment passed by the disciplinary authority by way of I.A. No. 7675 of 2016 has stated that the petitioner submitted his explanation to the charges before the Regional Deputy Director of Education, Saran at Chapra on 06.05.2014 along with twenty documents in his support. It is the specific case of the petitioner that the Presenting Officer did not produce any witness before the Enquiry Officer. No document was exhibited by the Presenting Officer and no witness has been examined in support of the charges.

11. I find substance in the argument of learned counsel for the petitioner that no oral enquiry was conducted and no date of hearing was fixed by the Enquiry Officer for holding departmental proceeding inasmuch as the respondent authorities have failed to reply to the specific averments of the petitioner that no oral enquiry was held and no witnesses were examined to support the documents to be produced by the Presenting Officer during the course of enquiry. From the enquiry report it



appears that the Enquiry Officer has only considered the explanation of the petitioner *vis a vis* the charges levelled against him and has given his opinion in the enquiry report. As such, I am of the opinion that the enquiry report is not based upon evidence and has been prepared on the *ipse dixit* of the Enquiry Officer.

12. The Hon'ble Supreme Court in a judgment reported in *Roop Singh Negi versus Punjab National Bank and Ors.* reported in (2009) 2 SCC 570 in paragraph nos. 14, 15 & 23 has held as follows:-

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the



only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be



applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

13. In the present case also no witness was examined to prove the documents and even the documents were not produced by the Presenting Officer during the course of enquiry inasmuch no date of enquiry was fixed. As such, it is evident that no oral enquiry was conducted by the disciplinary authority.

14. The Hon’ble Supreme Court has held that the materials brought on record pointing out the guilt are required to be proved and the decisions must be arrived at on some evidence, which is legally admissible.

15. I also find that the petitioner along with his explanation has submitted twenty documents in support of his defence. The Enquiry Officer neither granted opportunity to the petitioner to cross -examine the witnesses as no witness was produced by the Department and opportunity to the petitioner was also not given to produce his defence material / documents during the course of enquiry.



16. This Court can not loose sight of the fact that the Presenting Officer though appointed, did not lead any evidence, either oral or documentary on the charges / allegations. On the contrary, the Enquiry Officer assumed the role of Presenting Officer and on the basis of explanation given by the petitioner and the memo of charges, has submitted the enquiry report, which in my opinion is in complete violation of the principles of natural justice and the established procedures for conducting departmental proceeding.

17. In another judgment of this Court passed in the case of S.K. Verma vs The State of Bihar reported in 2000(1) PLJR 116 this Court has held in paragraph no. 16 as follows:-

“In view of the fact that during the inquiry no witness was examined, this Court holds that 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. It is well known that at this stage provision of the Indian Evidence Act does not apply. But, the substantial principles of Evidence Act are to be observed in a departmental enquiry also.”

18. Considering the aforesaid discussion on facts and law



and the fact that during course of enquiry no oral enquiry was conducted, no witness was examined and the documents have not been proved and the petitioner was not granted opportunity to adduce evidence, accordingly, in my opinion the enquiry itself has vitiated. The Enquiry Officer has failed to discharge his duties as an independent adjudicator. Resultantly, I hold that the charges against the petitioner can not be said to have been proved on the basis of defective enquiry report.

19. It is now well known that at the stage of enquiry, the delinquent is entitled to be given a reasonable opportunity to cross- examine the witnesses, who are produced to prove the charges. The delinquent also has a right to adduce evidence by producing his witness.

20. Accordingly, I hold that the disciplinary authority has completely failed to adhere to the principles of natural justice and entire proceeding suffers from gross procedural illegality. Consequently, the punishment order based upon invalid enquiry cannot sustain.

21. In the result, the order of punishment dated 30.06.2015 and the consequential appellate order 01.03.2016 are set aside.

22. The petitioner is entitled to be paid all consequential monetary benefits. I order accordingly.



23. Since the petitioner has already retired in the year 2016, accordingly, this Court is not directing the respondents to hold the enquiry afresh from the stage of memo of charge.

24. In the result, this application is allowed.

(Anil Kumar Sinha, J)

Praful/- AFR

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04-04-2024
Transmission Date	NA

