

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6529 of 2016

=====

Ramesh Kumar S/o Late Lakhan Mahto Resident of Village - Jhapani, Post -
Kiranpur, P.S. Mednichauki, District - Lakhisarai

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Government of Bihar, Patna
3. The District Magistrate, Lakhisarai
4. The District Education officer, Lakhisarai
5. The District Programme officer, Lakhisarai
6. The Block Education officer, Pipariya, Lakhisarai

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Rajeev Singh
		Mr. Bipin Chandra
For the Respondent/s	:	Mr. Gyan Prakash Ojha, G.A-7

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

10 29-07-2024 Heard learned counsel for the parties concerned.

2. The petitioner has filed the present writ application for quashing the order of punishment of dismissal passed by the District Programme Officer (Establishment), Lakhisarai, dated 01.12.2015.

3. The petitioner was appointed as Assistant Teacher and joined on 15.05.1995 in the district of Lakhisharai. After verification of the certificate of the petitioner, sanction was given by the District Superintendent of Education, Munger and Lakhisarai for payment of salary.



4. Learned counsel appearing for the petitioner submits that in the year 2011, while the petitioner was going from his home to Lakhisharai, in that course, he lost all the educational and academic documents due to rush in the bus, for which he lodged a *sanha* before the Officer-in-charge, Lakhisarai Police Station on 28.11.2011. The petitioner was put under suspension by the District Education Officer, Lakhisarai, vide letter no. 1339, dated 30.05.2014, on the ground of non-completion of school building, dereliction of duties and not obeying the order of the senior officer (Annexure 5).

5. The petitioner was issued charge sheet, having altogether 13 charges on 30.06.2018. Referring to charge no. 1, learned counsel submits that it refers to the inquiry report of Block Education Officer, Pipariya, bearing letter no. 272, dated 09.09.2013, saying that the charge is proved.

6. Learned counsel submits that charge no. 1 shows non-application of mind and further it is in violation of principle of natural justice inasmuch as the petitioner had no knowledge about any inquiry conducted by the Block Education Officer, Pipariya, and the copy of the inquiry report was also not furnished at any point of time to the petitioner.

7. He further submits that the memo of charge does



not contain the list of witnesses and the documents to be relied upon during the course of inquiry by the department. On this ground alone, the departmental proceeding vitiates and the impugned order is not sustainable.

8. He relies upon the judgment of this court reported in **Nageshwar Sharma v. The State of Bihar and Others**, reported in **2024 (1) BLJ 486**, to submit that the Division Bench of this court, taking into consideration Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, has held that non citing of witnesses or authors of the documents in the memo of charge and examination and non-examination of those authors are against the principle of natural justice.

9. Learned counsel further submits that no oral inquiry was conducted and no witnesses were produced by the department during the course of inquiry and the Enquiry Officer has submitted the inquiry report on his *ipse dixit* holding the charges as proved on the basis of explanation submitted by the petitioner on the charges and comments of the Presenting Officer.

10. Learned counsel further submits that this Court vide its order, dated 06.08.2019, granted liberty to the petitioner



to approach the District Programme Officer (Establishment), Lakhisharai, and to produce original certificates or the documents along with the copy of the order dated 06.08.2019 to demonstrate that he was not continuing by means of proxy name, but on the basis of his appointment as Assistant Teacher. The petitioner submitted all the documents including his educational qualification and certificates before the District Programme Officer (Establishment), Lakhisharai, on 09.08.2019, which has been brought on record by way of supplementary affidavit filed by the petitioner, but no decision has been taken in this regard. The documents referred to in the inquiry report were never produced and handed over to the petitioner by the department or the Enquiry Officer and on this ground also, the entire inquiry vitiates.

11. On the other hand, learned counsel for the State submits that from voter list produced during the course of inquiry by the Enquiry Officer shows that the name of the petitioner is Manoj Kumar and not Ramesh Kumar. The petitioner had been working in the name of Ramesh Kumar, not Manoj Kumar that is why the order of punishment terminating the services of the petitioner has been passed.

12. Upon hearing the parties and on perusal of the



materials on record, the fact which emerges is that the petitioner was initially suspended on 30.05.2014, on the ground that he failed to complete the construction of school building/ disobedience of orders of senior officials etc. The memo of charge served upon the petitioner does not contain any list of witnesses and the list of documents to be relied upon by the department during the course of inquiry.

13. Sub-rule (3) of Rule 17 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, is quoted as follows:-

“17. Procedure for imposing major penalties. -

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;

(ii) a statement of the imputations of misconduct or misbehaviour 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 charge are proposed to be sustained.”

14. On perusal of the aforesaid, it appears that the memo of charge shall contain a list of such document and the list of such witnesses by whom article of charge are proposed to be sustained.

15. The memo of charge (Annexure 6), dated 30.06.2014, does not contain any list of witnesses and/or list of document to be relied during the course of inquiry against the petitioner. The disciplinary proceeding and the order of punishment vitiates on this very ground alone.

16. Furthermore, upon perusal of the inquiry report, it transpires that the Enquiry Officer has not examined any witnesses and/or any document was exhibited during the course of inquiry before the Enquiry Officer. However, the Enquiry Officer, in the inquiry report, has relied upon various documents, including the letter no. 272 dated 09.09.2013, by which the charges against the petitioner are said to be proved as per charge no. 1, but according to the petitioner, neither the copy of the documents relied upon by the Enquiry Officer nor the copy of the inquiry report conducted by the Block Department Officer, Pipariya, was provided to the petitioner. It appears that



Enquiry Officer has collected the documents without making the same available to the petitioner during the course of inquiry.

17. An Enquiry Officer acting as a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department /disciplinary authority/Government. His function is to examine the evidence produced by the Department, and even in the absence of the delinquent officer, it is his duty to see as to whether the un rebutted evidence is sufficient to hold that the charges as proved.

18. In the present case, no such procedure has been followed and no oral inquiry was conducted by the Enquiry Officer. Since no oral evidence has been examined and documents have not been proved during the course of inquiry, those documents could not have been taken into consideration to conclude that the charges have been proved against the petitioner.

19. 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 the inquiry by the Enquiry Officer against the petitioner by itself could not be treated to be evidence in a disciplinary proceeding.



20. Considering the discussions herein above, I find that the inquiry has been conducted in complete violation of principle of natural justice and the statutory provision including in complete disregard of the procedure for conducting inquiry. The Presenting Officer did not produce any documentary evidence or the oral evidence to prove the charges. The Enquiry Officer in such circumstances has grossly erred in assuming this role to himself and merely on the basis of comment of the Presenting Officer and the defence of the petitioner upon charges has held the charges against the petitioner as proved. The inquiry report, thus submitted by the Enquiry Officer, is based upon the *ipse dixit* holding the charges as proved. As such, in my opinion, the inquiry itself has vitiated.

21. In the result, the finding of the Enquiry Officer and the order of punishment are set aside with liberty to the department/respondents to initiate a fresh departmental proceeding against the petitioner from the stage of service of memo of charge and to conduct the inquiry in accordance with law.

22. Consequent to the order of dismissal having been quashed by this Court, the petitioner shall be paid 50 per cent of the back wages inasmuch as the petitioner has not produced any



material or statement to the effect that he was not gainfully employed anywhere after dismissal from the service.

23. Insofar as the claim of the petitioner for salary from March, 2014 till November, 2015, i.e., before the date of order of punishment, the authority is directed to consider the same and take a decision for payment of salary for the aforesaid period within one month.

24. Accordingly, this writ application is allowed to the extent indicated above.

(Anil Kumar Sinha, J.)

siwani/-

U			
---	--	--	--

