

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12803 of 2024

Shivnath Kumar, Son of Radheshyam Sharma, Resident of House No.- 15, Road No.- 9C, Keshri Nagar, P.S.- Rajiv Nagar, District- Patna presently working as Accounts Assistant-cum- Data Entry Operator, Block Resource Centre, Kako, Jehanabad, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Special Director, Education Department, Government of Bihar, Patna.
3. The Development Commissioner-cum- Chairman, Executive Committee and Appellate Authority, Bihar Education Project Council, Bihar, Patna.
4. The State Project Director, Bihar Education Project Council, Shiksha Bhawan, Rashtrabhasha Parishad Campus, Saidpur, Rajendra Nagar, Patna.
5. The District Magistrate-cum- Chairman, District Executive Committee, Bihar Education Project, Jehanabad, District- Jehanabad.
6. The District Programme Officer, Elementary Education and Surv Shiksha Abhiyan, Jehanabad, District- Jehanabad.
7. The Block Education Officer, Block Resource Centre, Kako, District- Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
For the State : Mr. Saroj Kumar Sharma, AC to AAG-3
For the BEPC : Mr. Girijesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 29-08-2024 Heard Mr. Vijay Kumar Singh, learned counsel appearing on behalf of the petitioner, Mr. Saroj Kumar Sharma, learned AC to AAG-3 appearing on behalf of the State and Mr. Girijesh Kumar, learned counsel appearing on behalf of the Bihar Education Project Council.



2. The Petitioner in Paragraph no.1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

“i). For issuance of an appropriate writ in the nature of CERTIORARI for quashing the part of the order dated 04.08.2022 passed by the Respondent no.4 and contained in his memo no.4725 dated 04.08.2022, whereby and where under the Respondent no.4 was pleased to pass an order for permanent deduction of 10% in the monthly honorarium of the petitioner.

ii). Alternatively for issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent no.3 to dispose of the revision filed by the petitioner before the Respondent no.3 on 17.12.2023 against the part of the order dated 04.08.2022 passed by the Respondent no.4 contained in memo no. 4725 dated 04.08.2022 whereby and where under the Respondent no.4 has been pleased to pass an order for permanent deduction of 10% in the monthly honorarium of the petitioner.

iii). For issuance of any other appropriate writ / writs, order / orders direction/ directions for which the writ petitioner would be entitled under the facts and circumstances of the case.”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as an Accounts Assistant- cum- Data Entry Operator on the basis of short term contract and he was posted in Block Resource Centre, Kako, Jehanabad vide letter no. 2455 dated 10.09.2007 issued by the Bihar Education Project, Jehanabad and the contract of the petitioner is extended time to time.

4. Learned counsel further submitted that the petitioner pursuant to the direction of the Bihar Education Project Council contained in letter no.



MGT/SLO/322/2009/6368 dated 17.08.2016 was deputed in AC/DC Cell of Education Department, Bihar and he was relieved vide memo no.1956 dated 29.08.2016 issued by the Bihar Education Project. The petitioner was associated with the work of scheme of Student Credit Card in State Project Management Unit. During the course of discharge of duty under the scheme of Student Credit Card in the State Project Unit, the Special Secretary, Education Department, Bihar requested the State Project Director, Bihar Education Project Council, Patna to cancel the deputation of the petitioner as well as his joining to his original place of posting for the alleged charges of absence of the petitioner from duty vide letter no.94 dated 31.03.2021. By the said letter, the Special Secretary also directed for 10% deduction from the salary of the petitioner for a year and pursuant to the aforesaid request of the Special Secretary, the State Project Director, Bihar Education Project Council, Patna has cancelled /terminated the deputation of the petitioner and directed the petitioner to submit his joining to his original place of posting on 15.04.2021 vide letter no.2686 dated 13.04.2021. However, the petitioner became seriously ill and did not submit his joining at his original place of posting in compliance of the direction of the State Project Director, Bihar Education Project



Council, Patna. Petitioner further submitted that he was suffering from Jaundice, as well as, Tuberculosis and doctor had advised the petitioner for complete bed rest and during the interregnum period there was COVID-2019 pandemic in full swim and due to ill health and weakness, the petitioner could not join to his original place of posting.

5. The petitioner has sought interference with the penalty order on the ground that after long treatment, the petitioner recovered from his ailment and after doctor's advice petitioner had gone to join the Block Resource Centre, Kako Jehanabad on 26.03.2022 with medical certificate but the joining of the petitioner was not accepted by the competent authority. The petitioner came to know that during the period of ailment as well as COVID 2019 pandemic the meeting of District Executive Committee was held on 18.09.2021 in the chairmanship of District Magistrate-cum- Chairman in which, a decision was taken for termination of the contract of the petitioner ex-parte and pursuant to the decision of District Executive Committee, the District Programme Officer, Jehanabad was pleased to cancel the contract of the petitioner vide memo no. 891 dated 03.06.2022 without applying his independent mind. The petitioner had preferred appeal before



the State Project Director, Bihar Education Project Council, Patna with supporting documents mentioning all the facts in detail for not joining at his original place of posting after cancellation of his deputation vide letter no. 2686 dated 15.04.2021. After filing application of appeal by the petitioner before the Additional State Project Director, Bihar Education Project Council, Patna vide his letter no. 3174 dated 01.07.2022 directed District Programme Officer, Jehanabad to submit fact finding report against the appeal filed by the petitioner and the District Programme Officer, Jehanabad submitted his fact finding report vide his letter no. 1108 dated 06.07.2022. After going through the plea taken by the petitioner in memo of appeal with supporting documents, as well as, the fact finding report submitted by the District Programme Officer, Jehanabad, the State Project Director, Bihar Education Project Council, Patna arrived at a finding that due to ailment, the petitioner could not join his original place of posting at Block Resource Centre, Kako, Jehanabad, and he was pleased to set aside the order passed by the District Programme Officer, Jehanabad contained in memo no.891 dated 03.06.2022. However, the State Project Director, Bihar Education Project Council, Patna has passed an order for permanent deduction of 10% from the



honorarium of the petitioner vide memo no. 4725 dated 04.08.2022.

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner aggrieved with penal action of permanent deduction of 10% in the monthly honorarium of the petitioner vide order contained in Memo no.4725 dated 04.08.2022, has filed an Appeal/Revision before the Development Commissioner, Bihar against the said order for considering his grievance that no such deduction can be made unilaterally, which is against the principle of natural justice.

7. Heard the parties.

8. The petitioner is aggrieved by the unilateral action of the respondent authorities, who after remand, instead of giving any opportunity of hearing to the petitioner, had passed the penalty order. The Apex Court in the case of ***State Bank of India & Ors. v. Rajesh Agarwal & Ors*** reported in ***(Civil Appeal No. 7300 of 2022)*** has held that the Principle of natural justice are not mere legal formalities but are substantive obligations that need to be followed by the decision making and adjudicating authorities. Therefore, principles of *audi alteram partem* has to be read to save it from the vice of arbitrariness. I find it apt to refer paragraph no 29, which is, inter alia



reproduced hereinafter:

“ we need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi- judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.”

9. Considering that petitioner has availed efficacious remedy of Appeal before the Divisional Commissioner, the present writ petition is **disposed of** with a direction to the Divisional Commissioner to take appropriate action on the



Appeal/Revision filed by the petitioner against the order contained in Memo no.4725 dated 04.08.2022 expeditiously, to avoid any further delay, as the order itself is penal in nature.

(Purnendu Singh, J.)

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