

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20257 of 2021

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Alok Kumar, Son of Late Bijali Singh resident of Village- Mahmadda, P.S.-
Patahi, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Regional Deputy Director, Tirhut Division, Muzaffarpur.
4. The District Education Officer, Vaishali at Hajipur.
5. The District Education Officer, East Champaran, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Virendra Kuar, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Mishra, (SC16) Mr. Madhukar Mishra, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 04-12-2024 Vigilance Investigation Bureau Case No. 05/2016,

dated 12th January, 2016 under Sections 7, 8, 13 (2) read with

Section 13 (1) (d) of the Prevention of Corruption Act, 1988 was

registered against the petitioner on the basis of a preliminary

investigation conducted by the Vigilance Investigation Bureau

on a written complaint submitted by one Munna Sah.

2. The said Munna Sah (hereinafter described as the

de facto the complainant for short) lodged a complaint before

the Superintendent of Police, Vigilance Investigation Bureau,

Bihar, stating, inter alia, that he was a teacher in newly created

Government Primary School, Shakti Nagar, Block-Paharpur, in



the District of East Champaran. The District Education Officer was the drawing and disbursing officer of the said de facto complainant. Sometimes before December 2015, his salary was stopped by the President of the Shiksha Samiti. He submitted an application before the District Education Officer of his jurisdiction requesting him to release his salary. The District Education Officer passed an order allowing the prayer of the de facto complainant but the letter containing the said order came to the hand of one Sanjeev Kumar, Head Clerk of the office of the District Education Officer. He demanded a sum of Rs. 20,000/- for delivery of the said letter on the basis of which the salary of the de facto complainant petitioner might have been disbursed.

3. The Vigilance Investigation Bureau conducted an enquiry over the said allegation and arrested the present petitioner who was a peon in the office of the District Programme Officer along with the said Sanjeev Kumar. On arrest, the petitioner was suspended. Subsequently, a departmental proceeding was initiated against him. In the departmental proceeding, the enquiry officer found the petitioner guilty of gross misconduct and proposed him to terminate from his service. Accordingly, an order of termination



was passed against the petitioner. The petitioner challenged the said order of termination before the Director, Secondary Education Government of Bihar, Patna who refused to interfere with the order of dismissal and affirmed the same. Against the said order, the petitioner preferred C.W.J.C. No. 8601 of 2017. The said writ petition was disposed of by a co-ordinate Bench on 3rd August, 2018. The order of termination was set aside on the ground that the inquiry was not conducted in terms of Rule 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 as well as the order of the Appellate Authority in terms of the relevant provision of the said rules. After setting aside the order of termination, the petitioner's case was remanded back to the enquiry officer to conduct the enquiry in a fair, proper and transparent manner following the procedure provided in Rule 17 of the said Rules, 2005.

4. On the basis of the judgment passed by the Co-ordinate Bench in the above mentioned writ petition, departmental enquiry was initiated de novo against the petitioner. The enquiry officer submitted his report on 5th October, 2020.

5. During enquiry, the delinquent employee took a defence that the alleged bribe money was not recovered from



him. He was falsely implicated in the said case. At the time of alleged raid, one journalist recorded the entire incident in his video and the said videography, if produced would prove the real fact of the incident. The enquiry officer did not take any attempt to examine the said videography. No witness on behalf of the prosecution was examined to prove the misconduct of the petitioner even the de facto complainant or any member of staff of the said office was examined.

6. It is pointed by the learned Senior Counsel on behalf of the petitioner that the enquiry officer submitted his report holding the delinquent employee guilty on the basis of the statement made by the Presenting Officer without considering any evidence. Practically, the second enquiry report is a replication of the first one.

7. It is further submitted by the learned Senior Counsel on behalf of the petitioner that the petitioner was given two days time to submit his second show cause against the proposed order of punishment. The petitioner prayed for further time, but time was granted by one day, compelling the petitioner to submit his second show cause report. On the basis of the second show cause report, he was again terminated from service. The petitioner preferred an appeal before the statutory



appellate authority, albeit 73 days delay.

8. Only on the ground of limitation, the appeal of the petitioner was dismissed and the order of termination was maintained. It is submitted by the learned Advocate for the petitioner that the impugned order of termination is illegal, arbitrary and devoid of any evidence. Therefore, the same is liable to be set aside.

9. Learned Advocate on behalf of the State-respondents, on the other hand, submits that from the chargesheet and the report submitted by the Vigilance Investigation Bureau, it is found that the petitioner was arrested, when he was in his office along with the primary accused Sanjeev Kumar. After arrest, his hands were washed and it turned pink due to the presence of phenolphthalein powder. The said powder was mixed with the bribe money. Therefore, petitioner's involvement in accepting the bribe cannot be doubted and there is no reason to interfere with the impugned order passed by the Appellate Authority.

10. In ***Roop Singh Negi V. Punjab National Bank & Ors.***, reported in (2009) 2 SCC 570, the Hon'ble Supreme Court reproduced in paragraph 17 of the said report an observation made in ***Moni Shankar V. Union of India***, reported in (2008)



3 SCC 484. Paragraph 17 of the said report runs thus:-

"17. "The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."

11. In the instant case, the enquiry officer did not even examine any witness. He based his finding on the basis of a police report submitted by Vigilance Investigation Bureau.



The enquiry officer also did not consider the specific defence made by the petitioner. Furthermore, the order of the Disciplinary Authority as well as the Appellate Authority are not supported by any reason, these are based on the submission made by the presenting officer and as the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon certain fact of investigation done by the Vigilance Investigation Bureau, the concerned officer and the *de facto* complainant ought to have been examined the statement of the investigating officer and the police report will not automatically be treated as evidence. The inferences drawn by the enquiry officer apparently was not supported by any evidence. The Appellate Authority further did not consider the case at all on technical ground of limitation and he dismissed the appeal.

12. In view of such circumstances, this Court is of the considered opinion that the impugned order of termination of service of the petitioner along with the appellate order affirming the same cannot be sustained. The order of termination affirmed by the Appellate Authority is, therefore, set aside.

13. The instant writ petition is allowed, on contest, however, without cost.



14. The petitioner be reinstated in service with immediate effect. He is also entitled to all financial and other consequential benefits.

(Bibek Chaudhuri, J)

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