

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21939 of 2012

Sanjay Kumar Deo “Kanhaiya”, Son Of Shri Purushottam Prasad Deo ' Saroj'
Resident Of At and Po - Barhetta, Police Station - Kalyanpur, District -
Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Bihar, Patna
2. The Director, Primary Education, Govt. Of Bihar, Patna
3. The Director Administration-Cum-Additional Secretary, Human Resources Development Department, Bihar
4. The District Education Officer-Cum-Drawing and Disbursing Officer, Primary Teachers' Education College (DIET), Narar, Madhubani
5. The Principal, Primary Teachers' Education College (DIET), Narar, Madhubani
6. The Sub Divisional Officer, Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar, Advocate Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. Dhurendra Kumar, AC to GP 5

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 05-09-2024

Heard Mr. Alok Kumar along with Mr. Pranav
Kumar, learned counsels appearing on behalf of the petitioner;
Mr. Dhurendra Kumar, learned AC to GP 5 for the State.

2. In spite of the fact that present writ petition is pending since the year 2012 and in spite of the specific direction of this Court dated 20.06.2024, no counter affidavit has been filed till date.

3. Petitioner has questioned the very initiation of departmental inquiry to be faulted on the ground that *vide*



Memo No.450 dated 08.04.2011, conducting officer was appointed and he is the same person who had instituted the first information report against the petitioner for alleged irregularities mentioned in the complaint vide letter No.428 dated 06.03.2011 which was communicated by the then present Block Development Officer, whose name has been printed in Annexure 3 to be one Vijay Kumar Paswan, S/o Shri Ram Ekbal Manjhi. Name of the SDO is quite eligible, however, from perusal of the memo no.450 dated 08.04.2011, it is apparent that the name is missing. Learned counsel further submitted that in spite of the specific direction of this Court in CWJC No.1805 of 2012 dated 23.02.2012, the conducting officer remained the same person in complete defiance of the order of this Court and on this sole ground, the penalty order is required to be interfered by this Court.

4. Learned counsel appearing on behalf of the State informs that in spite of repeated information given to the appropriate authority, no instruction has been received till date.

5. This Court *vide* order dated 23.02.2012 passed in CWJC No.1805 of 2012 had disposed of the writ petition of the petitioner and relevant part of the said order is reproduced hereinafter:



“The third ground is that there is a First Information Report, Pandaul P.S. Case No. 58 of 2011 against the petitioner with regard to the same issue. The informant SubDivisional Officer has been made the conducting officer in the departmental proceeding. No further material is required to demonstrate the prejudice that may be caused to the petitioner as the conducting officer shall naturally be inclined to uphold the allegations. Fairness requires the conducting officer to be replaced.

A departmental proceeding is required to be held fairly, reasonably and responsibly. What shall be the meaning of these three terms shall depend on the facts of a case. It also encompasses not only that the procedure should be fair but that it must appear to be fair also. There should be no occasion for any apprehensions. If the informant has been made the conducting officer, it can be said that it shall not be very fair to the petitioner. The apprehension in such a situation, of the petitioner, cannot be held to be fanciful or unfounded. There shall undoubtedly be a tendency or leaning on part of the conducting officer to uphold the allegations made by him in the capacity of informant. The Court is not very sanguine, that as a normal human being, the conducting officer shall be able to compartmentalize his mind between his role as the conducting officer and informant maintaining distinction in the decision making process. Bias cannot be ruled out. It is not actual bias but the serious apprehension of bias which is important. The facts reflect serious possibility of bias.

The Court is not inclined to call for a counter affidavit as in that event, the petitioner has made out a case for stay of the departmental



proceedings. If what the petitioner contends is factually not correct, the respondents can pass appropriate orders forthwith upon presentation of a copy of the present order and continue with the departmental proceeding. Conversely if what the petitioner contends is factually correct, the respondents must change the conducting officer and then proceed with the departmental proceeding in accordance with law.

The writ application stands disposed.”

6. In compliance of the order dated 20.06.2024, I find it proper to pass the order on the basis of pleadings made in the writ petition.

7. The petitioner in paragraph no.27 of the writ petition has specifically given information that the conducting officer was required to be changed, being the same person, who had lodged the FIR against the petitioner which is in violation of the order dated 23.02.2012 passed in CWJC No.1805 of 2012. Though the petitioner accepts that he has not filed any contempt petition against the said order, considering the fact that penalty order has been passed against the petitioner, imposing major punishment of withholding of one increment with cumulative effect is faulted with, as the inquiry conducted against the petitioner is illegal on the ground that the conducting officer cannot remain the same person who has lodged the FIR in spite



of the direction passed by this Court *vide* order dated 23.02.2012 passed in CWJC No.1805 of 2012.

8. Considering the aforesaid information given by the petitioner, the penalty order is faulted for the reason that after the inquiry report was submitted no second show cause was served to the petitioner in accordance with sub-clause(3) of Rule 18 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and, as such, the penalty order as contained in Memo No.960 dated 19.07.2012 is hereby set aside and quashed.

9. In the light of the law laid down by the Apex Court in the case of **B.C.Chaturvedi V. Union of India & Ors.** reported in **(1995) 6 SCC 749**, the matter is remitted back to the concerned authority to proceed afresh in accordance with law.

10. The writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2024
Transmission Date	NA

