

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8185 of 2020

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Rabindra Kunwar Son of Sri Paras Nath Kunwar Resident of Kajirawan,
Khurd, P.O.- Mishra Batarahan, P.S.- Fulwaria, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Education Department, Government of Bihar, Patna.
3. The Regional Education Deputy Director, Saran Division at Chapra.
4. The District Education Officer, Gopalganj.
5. The District Programme Officer (Establishment), Gopalganj.
6. The District Programme Officer (Yojna Evam Lekha), Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sharma, Advocate
For the Respondent/s : Mr. Apurva Kumar, AC tp GA 12

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

7 27-01-2025 Heard Mr. Rajesh Kumar Sharma, learned counsel

appearing on behalf of the petitioner and Mr. Apurva Kumar,

learned counsel for the State.

Re.: I.A. No. 01 of 2021

2. Learned counsel appearing on behalf of the
petitioner by filing the present interlocutory application seeks
amendment in Para-1 of the writ petition by adding additional
relief as stated in Para-1 of the present interlocutory application.

3. Having considered the information contained in the



interlocutory application and the grounds mentioned therein and the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the interlocutory application.

4. I.A. No. 01 of 2021 is allowed.

Re.: C.W.J.C. No. 8185 of 2020

5. The petitioner in paragraph no.1 of the present writ petition has sought *inter alia* following reliefs:-

“A. For issuance of an appropriate writ to quash the cryptic, non-speaking order of suspension dated 25-08-2020 contained in Memo No.1549 (annexure-4) passed by the respondent no.5 whereby and whereunder the said respondent authority mechanically on same and similar enquiry report (annexure-1) for which petitioner was already suspended on 19-11-2019 vide Memo No.1171, against which hearing is pending before respondent no.3 and in pendency of said hearing, respondent no.5 again on same previous enquiry report (annexure-1) suspended the petitioner twice vide order dated 25-08-2020 (annexure-4) without affording reasonable opportunity of hearing to petitioner, which is also against the law laid down by this Hon’ble Court vide judgment dated 14-11-2017 passed in CWJC No.12472 of 2016 in case of Priya Ranjan Das Ranjan vs. State of Bihar and others in which Hon’ble Court in same and similar matter quash the order of the DPO.

B. For direction to pay all consequential benefit of service on concern post to petitioner by treating said suspension order as null and void ab initio. And for any other releif/reliefs for which the petitioners are found to be entitled under the provision of law involved in the present case.

Thereafter the petitioner filed I.A. No.1 of 2021 for modification of the prayer made in the writ application, *inter alia*, seeking following relief:



“That the present I.A. is being preferred against the Memo No. 1640 dated 07-09-2020 passed by the District Programme Officer (Establishment), Gopalganj (respondent no.5), whereby and where-under respondent no. 5, who himself conducted preliminary enquiry (Annexure-1) against the petitioner, subsequently same person in capacity of Disciplinary Authority, constitute/frame article of charge based upon said enquiry report (Annexure-1) in PRAPTRA "K" by making appointment of his subordinate employee as the Conducting officer & Presenting Officer under Rule-17 (3) of the Bihar CCA-Rule-2005, without considering the proposition of well settle law which stated that the departmental or domestic enquiry under Service Law are quasi judicial in nature and fundamental principle of natural justice as well as Evidence Act are required to be followed, further aforesaid act of respondent no. 5 violate the basic principle of law which stated that "No one can be a Judge for his own cause".

6. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was served charge memo contained in Memo No.1640 dated 07.09.2020 when the entire world was facing Covid 19 pandemic and several advisories were issued from time to time by different authorities to be followed. In view of the said Pandemic, it can be said that the authorities may not have taken any action to initiate disciplinary proceeding against the petitioner but in spite of the normalcy, they have delayed in taking any action on the basis of the charge memo issued to the petitioner in “Praptra K” containing different charges. Learned counsel submitted that the authority may be directed to conclude the departmental proceeding initiated against the petitioner in accordance with law within a reasonable time as more than three years have elapsed from the date of the normalcy of pandemic.



7. *Per contra*, learned counsel appearing on behalf of the State referring to the counter affidavit, submitted that petitioner in spite of lapse of 8 months has not submitted his reply. The inquiry report was submitted vide letter No.462 dated 16.11.2019 in respect of the complaint filed by the teachers of the school. The petitioner was suspended vide memo No.1549 dated 25.08.2020 and it was decided to initiate departmental proceeding against the petitioner. The charge memo was served to the petitioner vide letter No.1640 dated 07.09.2020 in accordance with the Bihar State Government Primary School Teacher Rule, 2006 which was subsequently repealed by coming into force of Primary School Teacher Promotion Rule, 2011 and again Rule 2018 for Primary School Teachers (Transfer Disciplinary Action and Promotion). Following which, establishment committee has been constituted, comprising District Education Officer (Chairman); District Programme Officer, (Establishment) (Member Secretary); Deputy Collector, nominated by District Magistrate (Member); District Programme Officer (Planning and Account) (Member) and One Officer of SC/ST (Member). It is further submitted that the petitioner was suspended three times on different charges and, as such, the petitioner's past record is also not satisfactory.



8. Having considered the rival submissions made on behalf of the parties, as well as, considering the manner in which the authorities have proceeded to take disciplinary action against the petitioner in absence of approval of the appointing authority, the charge memo contained in Memo No.1640 dated 07.09.2020 cannot be sustained in view of the fact that neither the petitioner, nor the respondents have given any information in respect of any approval of appointing authority in respect of charge memo which has been served to the petitioner. The said fact is required to be verified by the appointing authority. However, even if the charge memo is in accordance with the procedure prescribed as per the mandate of Article 311 of the Constitution of India, I find that long delay in initiating departmental proceeding will only call for interference of this Court. It has been informed by the petitioner and in absence of any information in the counter affidavit in respect of the subsequent step which has taken place, even considering the two years of standstill as the entire world was affected by Covid 19 Pandemic. Accordingly, I set aside and quash the order of suspension contained in Memo No.1549 dated 25.08.2020.

9. I find it appropriate to direct the Director, Primary Education Department, Government of Bihar, Patna to call for



the materials relevant for taking disciplinary action against the petitioner afresh and place the same before the Establishment Committee so that corrective measures be taken in accordance with law well, if so required, within a period of six weeks from the date of communication of this order.

10. The writ petition is accordingly disposed of.

(Purnendu Singh, J)

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