

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.303 of 2024

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Rajesh Kumar Son of Bhola Nath Prasad Resident of village-Mauleshwari
Chowk, Police Station-Town, Distt-Siwan

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secreary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Regional Deputy Director Education, Tirhut Division, Muzaffarpur.
5. The District Education Officer, Motihari.
6. The Principal Managal Seminary Inter College, Motihari.
7. The Deputy Director, Secondary Education, Department of Education, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
For the Respondent/s : Mrs. Binita Singh, SC28

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-01-2025

Heard Mr. Sanjay Kumar, learned counsel on behalf
of the Petitioner, and Mrs. Binita Singh SC-28, learned counsel on
behalf of the Respondents.

2. The present writ petition has been filed seeking the
following reliefs:

*“i) That the petitioner prays for issuance of
an appropriate writ/writs, order/orders,
direction/direction for quashing the order which
contained in Memo No. 218 dated 24.04.2023 issued
under the signature of the Respondent No. 3 by which the
petitioner has been dismissed from his service.*

*ii) The Petitioner further prays for quashing of
the Appellate Order which contained in Memo No. 683*



dated 08.09.2023 issued under the signature of Respondent No. 2 but which appeal filed by the petitioner against the order passed by the respondents is in violation of Section 17 of the C.C.A Rules, 2005 (Classification, Control and Appeal) vis-à-vis direction issued by this Hon'ble Court in CWJC No. 23146 of 2028 filed by this petitioner.

iii) And, for any other relief/reliefs the petitioner may be found entitled under the facts and circumstances of the case."

3. The brief fact of the present case is that, petitioner was working as Lab Assistant (Automobile Engineering Fit Technology), Mangal Seminary Inter College, Motihari in transport Department vide Memo No. 147 dated 09.08.2005. It was apprised by the transport department vide Memo No. 622 dated 07.02.2007 that the petitioner was indulged and caught red handed by the vigilance team in the act of taking illegal gratification against which one First Information Report bearing vigilance PS Case No. 12/2007 dated 01.07.2007 was registered. Accordingly, Petitioner was suspended from his service and a disciplinary proceeding was commenced against the petitioner vide Memo No. 92 dated 29.03.2007.

4. Learned counsel for the petitioner submits that, based on the said FIR, the petitioner was arrested and put under suspension, but after getting bail he was reinstated. The suspension



of the petitioner was revoked by the office order which contained in Memo No. 652 dated 01.09.2010.

5. Learned counsel for the petitioner further submits that initially the Departmental proceedings was initiated and inquiry officer was appointed by the office order bearing Memo No. 109 dated 13.04.2007, and the Inquiry officer after considering the reply of the petitioner submitted an inquiry Report on 25.02.2008 wherein he mentioned that memo of charge is based on Vigilance Case and the case is pending for Trial, therefore it will be appropriate to wait for the result of the respective Vigilance Case (Annexure P/3 of this application). During the pendency of the Vigilance case, again an officer bearing Memo No. 221 dated 21.03.2014 was issued by which petitioner was again put under suspension and a supplementary Memo of Charge dated 21.02.2014 was submitted. He further submits that the Petitioner has participated and submitted his reply to the said inquiry and mentioned that the relevant documents were not supplied to him, so after considering petitioner's reply to the inquiry, the inquiry officer submits the inquiry report on dated 17.03.2017. Subsequently Disciplinary authority issued the second show cause notice to the petitioner on 10.07.2017 by which the petitioner was directed to reply to the 2nd Show Cause (Annexure P/6 & P/7 of the



is application). However, the Disciplinary Authority without considering the reply of show cause passed the dismissal order against the Petitioner contained in Memo No. 140 dated 07.03.2018 (Annexure P/8 of this application).

6. Learned counsel for the petitioner further submits that, thereafter the petitioner filed appeal before the Appellate Authority, which got rejected by the office order contained in Memo No. 331 dated 02.07.2018 (Annexure P/9 of this application). Pursuant thereto, the petitioner filed writ petition before this court bearing C.W.J.C. No. 23146 of 2018 challenging both the order dated 07.03.2018 and 02.07.2018, which was set aside by the co-ordinate Bench of this Court on dated 29.03.2022 and the matter was remitted back for fresh consideration (Annexure P/10 of this application). Subsequently, the petitioner was reinstated by office order contained in Memo No. 272 dated 17.05.2022, and on the same day the petitioner was again put under suspension by office order contained in Memo No. 273 dated 17.05.2022 (Annexure P/11 & P/12 of this application). Subsequently, a separate memo of charge was prepared contained in Memo No. 291 dated 23.05.2022 and fresh inquiry was initiated by the office order contained in Memo No. 292 dated 23.05.2022. (Annexure P/13 & P/14 of this application). Subsequently, along



with memo of charge, letter of Deputy Superintendent-Cum-Inquiry officer of vigilance case dated 06.02.2007, copy of FIR dated 30.01.2007, copy of complaint dated 25.01.2007, verification report of constable, Hans Kumar, dated 29.01.2007 and copies of post-trap memorandum dated 30.01.2007 was provided to the petitioner and petitioner was asked to file reply before the inquiry officer. In pursuant to this petitioner filed reply before the inquiry officer along with relevant documents on dated 17.11.2022 (Annexure P/15 of this application). In that reply the petitioner explained his innocence on all the charges levelled against him and also stated that the “list of witness” and another related document was not supplied to him, also witnesses were not produced nor chief and cross examination of the witnesses were conducted.

7. Learned counsel for the petitioner further submits that a letter dated 22.11.2022 was issued to the petitioner for his appearance on 13.12.2022 and the petitioner appeared and submitted his reply accordingly on 13.12.2022 (Annexure P/17 of this application). On 24.11.2022, the inquiry officer even wrote a letter to complainant namely Prabhat Kumar Singh and M.P. Sergeant Major, Police Line, S.P. Officer, Motihari, for deposition on 13.12.2022, but both the witnesses did not appear on



13.12.2022 before the inquiry officer (Annexure P/18 of this application).

8. Learned counsel for the petitioner further submits that, on basis of the reply of the petitioner, the inquiry officer submitted an inquiry report on 23.12.2022, and subsequently, a letter was issued on 13.01.2023 by which again a show cause notice was issued to the petitioner (Annexure P/19 and P/20 of this application), and subsequently, petitioner replied to this show cause notice on 06.02.2023 (Annexure P/21 of this application), wherein he has specifically mentioned that there is a violation of Rule 17 of CCA, Rules 2005 (Classification, Control and Appeal), principle of natural justice and also of the direction issued by this Court. Subsequently, without considering the reply of show cause given by the petitioner an Impugned dismissal order dated 24.04.2023 contained in Memo No. 218 issued under the signature of Respondent No. 3 has been passed by the Disciplinary Authority. (Annexure P/22) Further, against this order, petitioner filed an appeal before Respondent No. 2 on 23.06.2023, and raised his issue again but appellate authority without considering the statement and contention made in appeal dated 23.06.2023 rejected the appeal vide order contained in Memo No. 683 dated



08.09.2023 issued under the signature of Respondent No. 2.
(Annexure P/24)

9. Lastly, the learned counsel for the petitioner contends that the petitioner has not received the subsistence allowance up to the date of the impugned order, i.e., 24.04.2023. Additionally, the inquiry report was prepared solely based on the FIR, the complainant's statement, and the verification carried out by Constable Hans Kumar, without conducting an examination of the relevant witnesses or furnishing the petitioner with a "list of witnesses" and other pertinent documents. Moreover, the report fails to take into account the petitioner's submissions provided in response to the show cause notices issued. Consequently, this amounts to a gross violation of the principles of natural justice.

10. Per contra, learned counsel on behalf of the Respondent No. 3 filed counter affidavit stating that in compliance of the order passed by this court in C.W.J.C. No. 23146 of 2018 dated 29.03.2022, one case bearing M.J.C. No. 689 of 2023 was also filed by the petitioner seeking implementation of the said order dated 29.03.2022, which ultimately was dropped and disposed vide order dated 01.09.2023 by this Court observing that the order dated 29.03.2022 has been complied and petitioner was granted liberty to take further recourse available to him. (Annexure



R/B & R/C of the counter affidavit). Thereafter, a decision was taken by the Director, Secondary Education, Education Department, Bihar, Patna to put the petitioner under suspension in contemplation of Departmental Proceeding under the provisions of Rule 9 (i) of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, on the charge that petitioner was caught red handed while taking illegal gratification for which he was authorized to act as Motor Vehicle Inspector vide Memo No, 273 dated 17.05.2022 (Annexure R/D of the counter affidavit) and subsequently, memo of charges was provided to the petitioner vide order dated 23.05.2022 contained in Memo No. 292 (Annexure R/E of the counter affidavit) and the Director, Secondary Education, Education Department, Bihar, Patna directed the Inquiry officer to submit inquiry report within a month, (Annexure R/F of the counter affidavit) as the said order contained in Memo No. 596 dated 29.09.2022.

11. Learned counsel for the Respondent No. 3 further submits that on request of petitioner to provide him the case diary, as well as charge-sheet of the trap case, learned counsel for the Respondent No.3 submits that the Deputy Inspector General of Police, Vigilance Department (Investigation Bureau) vide his letter no. 10510 dated 07.10.2022 apprised that all the relevant papers



including police papers have already been provided to the petitioner and petitioner has adopted dilatory tactics by asking for irrelevant documents (Annexure R/H of the counter affidavit).

12. Learned counsel further submitted that Inquiry Officer filed detailed inquiry report vide letter No. 114 dated 23.12.2022 wherein he opined that the charges levelled against the petitioner is proved. Subsequently, Disciplinary authority vide Letter No. 30 dated 13.01.2023 directed the petitioner to file his reply on 2nd Show Cause, (Annexure R/I) and petitioner submitted his reply to the 2nd Show Cause on 08.02.2023.

13. Lastly, the learned counsel for the Respondent submitted that the Disciplinary Authority, through its order dated 24.04.2023, as contained in Memo No. 218, rendered a decision after duly considering all materials available on record, including the inquiry report and the petitioner's reply to the second show cause notice. Based on this assessment, the Disciplinary Authority concluded that the charges against the petitioner were substantiated and, accordingly, imposed the penalty of dismissal by exercising powers under Rule 14(xi), Para-V of the Bihar Government Servant (CCA) Rules, 2005. Therefore, the impugned order has been issued in strict compliance with the law and established procedure, leaving no justifiable grounds for this Court



to entertain the present writ petition, which consequently merits dismissal.

14. Having considered the arguments advanced by the learned counsel for both parties and after a thorough examination of the available records, it is evident enough that the concerned Respondents have not submitted any documents to establish that the petitioner had the opportunity to examine the witnesses mentioned on record. This conclusion is further supported by the content of the impugned dismissal orders issued by Respondent No. 2 and Respondent No. 3, namely Memo No. 683 dated 08.09.2023 and Memo No. 218 dated 24.04.2023 respectively. Both orders explicitly indicate that the decisions were based solely on the inquiry report and the Petitioner's response to the show cause notice. However, the Respondent authorities failed to provide the petitioner with the list of witnesses and did not afford an opportunity to conduct the chief and cross-examination of the witnesses mentioned in the inquiry report, moreover, the respondent authorities have not even made any exhibits based on which petitioner could have defended himself.

15. Now, it is a well-settled principle of law, as discussed by the Hon'ble Apex Court in a catena of cases, such as ***Kuldeep Singh v. Commissioner of Police & Ors.***, reported in



(1999) 2 SCC 10; Union of India & Ors. v. S.K. Kapoor, reported in *(2011) 4 SCC 589*; and *Roop Singh Negi v. Punjab National Bank*, reported in *(2009) 2 SCC 570*, that the mere production of documents without the examination of witnesses does not constitute valid evidence. Furthermore, if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee to provide an opportunity for rebuttal; otherwise, it would amount to a violation of the principles of natural justice. Even this court in case of **L.P.A. No. 462 of 2024** dated **26.09.2024** followed this aforesaid principle.

16. Consequently, in light of the discussions made herein above and based on the aforesaid principle this court is of the view that the order of dismissal of petitioner from his service as contained in Memo No. 218 dated 24.04.2023 (Annexure – P/22 of the Writ Petition) passed by the Respondent No. 3 and the order of the Appellate authority as contained in Memo No. 683 dated 08.09.2023 (Annexure – P/24 of the Writ Petition) passed by the Respondent No. 2 be non-est and not sustainable in the eyes of law, hence set aside.

17. In the result, this writ application is allowed.



18. The respondents are directed to re-instate petitioner
in service with all consequential benefits.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.02.2025
Transmission Date	NA

