

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4513 of 2020

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Surya Kant Singh, son of late Murlidhar Prasad Singh, resident of Village-
Bhagwatipur, Post- Bajitpur, P.s. - Bihta, District- Patna, Pin - 801103.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna.
2. Director, Primary Education, Bihar, Patna.
3. Deputy Director, Primary Education, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Abhinav Srivastava
For the Respondent/s : Mr.Ashutosh Ranjan Pandey (Aag15)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :08-10-2024

Heard learned counsel for the petitioner and learned
counsel for the State.

2. As earlier observed by the Co-ordinate Bench of this
Court in the case of ***Pankaj Kumar v/s The State of Bihar and***
Ors. in ***CWJC No.5042/2016***, dated 04.09.2017-

*“Another allegedly corrupt
government servant would be succeeding in
his litigation because of the ignorance of the
Disciplinary Authority as regarding the
mandatory procedure underlying the Bihar
Government Servants (Classification,
Control and Appeal) Rules, 2005
(hereinafter referred to as ‘the Disciplinary
Rules’).*



It is about time that the Chief Secretary, Government of Bihar takes appropriate steps to train its officers discharging functions of a Disciplinary Authority for unless they have the time and inclination to go through ' the Disciplinary Rules' and understand the procedures prescribed therein, these disciplinary proceedings are proving a mockery.

It is because of such latches of the Disciplinary Authorities and their ignorance about the statutory procedure mandated under the 'Disciplinary Rules' that government servants facing serious corruption charges, succeed in the litigations. The matter is very serious and requires serious attention because the case in hand is not an isolated example rather this Court is burdened with matters clothed with statutory violations."

I share the same view and would like to reiterate the judgment mentioned above in the current case. It is essential to recognize that a departmental inquiry against a government servant should not be treated casually. Such inquiries are crucial for upholding accountability and maintaining the integrity of public service. Proper procedures and seriousness must be observed to ensure fair and just outcomes.



3. The present writ petition has been filed for the following relief/s:-

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 05/09/2018 bearing Memo No. 940 passed by the Principal Secretary, Education Department, Bihar, Patna, by which the appeal preferred by the petitioner against the order of punishment dated 16/12/2016 bearing Memo No. 1104 passed by the Director, Primary Education, Bihar, Patna, by which punishment of dismissal from service had been inflicted upon him, has been rejected;

(ii) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the order dated 16/12/2016 bearing Memo No. 1104 issued by the Director, Primary Education, Bihar, Patna, by which punishment of dismissal from service has been inflicted upon the petitioner in terms of the provisions contained under rule 14 (XI) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned



respondent authorities under the Education Department of the State Government to reinstate the petitioner in the capacity of an officer of Bihar Subordinate Education Service and accordingly, allow him to discharge his duties in the said capacity in the services of the State Government and extend all the consequential benefits, including payment of salary, arrears of salary, increments, etc. that have been denied to the petitioner on account of the impugned order of punishment of dismissal from service having been passed against him;

(iv) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

4. The brief fact of the case is that the petitioner was appointed on 20.03.1991 and posted in the capacity of Headmaster, Government Basics School, East Champaran and then transferred on 13.12.1995 against the post of Block Education Extension Officer, Koilwar. On 27.03.2007, amongst other persons, the petitioner was transferred to the post of Lecturer, Primary Teacher Training College, Priauta, whereafter, the petitioner submitted his joining which was duly accepted on 30.05.2007.



5. On 26.06.2007, a complaint was submitted by one Rajiv Ran Vijay Kumar to the Vigilance Department alleging that the petitioner was demanding illegal gratification for allocating school in his favour subsequent to the former's appointment on compassionate basis. On 28.06.2007, the petitioner was arrested by the Vigilance Department in connection with Vigilance P.S. Case No.80/2007 for the allegations u/s 7/13(2) read with section 13(1)(d) of the Prevention of Corruption Act. Thereafter, the petitioner was placed under suspension by a notice issued by concerned authorities by an order dated 20.07.2007 bearing memo no.782, at the HRD, Bihar Government w.e.f. 28.06.2007 and it was directed that after his release, his Headquarters would be office of District Superintendent of Education, Ara.

6. The Inquiry Officer was appointed and a memo of charge dated 01.08.2007 was framed and issued against the petitioner by the HRD, Bihar Government, in which, inter alia, a list of documents on the basis of which charges were to be proved was attached. The memo of charges had been drawn against the petitioner only on the basis of complaint filed by Rajeev Ran Vijay Kumar dated 26.06.2007 and the F.I.R. was instituted by the Vigilance Investigation Bureau with the memo of charge.

7. Later, the petitioner was released on regular bail by this



Court in Cr. Misc. No.51103/2007 dated 10.01.2008. The suspension of petitioner was revoked by order of HRD Department, Bihar on 12.06.2009. Thereafter, the petitioner was transferred to the post of Block Education Officer, Kudra.

8. On 10.02.2014, the District Programme Officer (Establishment), Bhojpur was appointed as the Presenting Officer in the departmental proceeding being conducted against the petitioner. On 12.02.2014, the petitioner was placed under suspension by an order bearing memo no.227 issued from the office of Directorate or Primary Education, Education Department, Bihar, Patna and his headquarters was fixed in the Office of Regional Deputy Director of Education, Patna and petitioner was directed to co-operate in the proceedings, failing which, it was indicated that an *ex parte* order would be passed.

9. On account of petitioner's illness, he was granted further time by the Authorities under Bihar Education Project Council to submit explanation within 10 days failing which adverse presumption was to be drawn against him. On 29.12.2014, the petitioner submitted detailed explanations before the Inquiry Officers.

10. Thereafter, on 16.10.2015 by letter bearing memo no.734, the petitioner was informed that sender of the letter, namely Sri



Arun Kumar Sharma (Deputy Director, Primary Education, Education Department, Bihar) had been appointed as the Inquiry Officer and the petitioner was directed to be present on 09.11.2015 to participate in inquiry proceedings. On 09.11.2015, the petitioner requested the Inquiry Officer for supply of necessary documents to make an effective representation and on 23.11.2015, the Inquiry Officer informed the petitioner that the next date of hearing was 11.11.2016 and in which, it was mentioned, inter alia, that the petitioner was not cooperating, disregarding the fact that the necessary documents had not been supplied to the petitioner.

11. On 11.11.2016, the petitioner submitted his explanations negating the charges and also referred to previous letter requesting for necessary documents. Thereafter, on 15.11.2016, the Inquiry Officer submitted his report dated 11.11.2016 to the Director, Primary Education, Bihar. On 24.11.2016 by a letter bearing memo no.1022, the petitioner was furnished the inquiry report by the Authorities under the Education Department and he was directed to show cause. Thereafter, the petitioner submitted his explanations.

12. On 16.12.2016 vide memo no.1104, the petitioner was dismissed from service by order of Director, Primary Education,



Bihar. Against this, on 09.01.2017, the petitioner preferred an appeal and on 16.03.2018, he moved before this Court vide CWJC No.2571 of 2018 for disposal of his appeal and it was directed that the appeal be disposed of within 60 days of receipt of order, where after, on 05.09.2018, the appeal preferred by the petitioner was dismissed by Principal Secretary, Education Department, Bihar. Aggrieved by the same, the petitioner has filed this writ petition.

13. Learned counsel for the petitioner submits that it is an admitted position that no document was given to the petitioner, which was requested by him on 09.11.2015. It is submitted that neither the complainant nor any person of the Vigilance Department was examined during the departmental proceeding. Reliance has been placed upon the judgment of the Apex Court in ***Roop Singh Negi Versus Punjab National Bank and Others*** as reported in ***(2009) 2 SCC 570***, wherein it was held at para-14 and 15 as under:

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The inquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The inquiry officer has a duty to arrive at a finding upon taking into



consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the inquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the inquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the inquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on



the basis that the offence was committed in such a manner that no evidence was left.”

14. Further, learned counsel for the petitioner has relied upon the case of ***State of Uttar Pradesh and Others Versus Saroj Kumar Sinha*** as reported in ***(2010) 2 SCC 772 at para-28, 29 and 30, which is as follows:-***

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with the rules of



natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in the proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental inquiry is conducted against the government servant, it cannot be treated as a casual exercise. The inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

15. Lastly, he has relied upon the case of ***Ram Lal Versus State of Rajasthan and Others*** as reported in ***(2024) 1 SCC 175***, whereby the Apex Court reiterated that mere acquittal in criminal proceedings does not confer any right to employee to claim benefit, including reinstatement. However, where charges in departmental inquiry and criminal court are identical, evidence, witnesses and circumstances are also same, and where



Court in exercise of judicial review finds that acquittal in criminal proceedings was after full consideration of prosecution evidence and prosecution miserably failed to prove charge, Court can interfere with order passed by the disciplinary authority where findings of disciplinary authority are found to be unjust, unfair and oppressive.

16. A counter-affidavit has been filed on behalf of the respondent no.2, wherein, it is stated that in view of a complaint made by Rajiv Ranvijay Kumar, the Vigilance caught the petitioner red handed while accepting bribe of Rs.23,000/- in lieu of proper school to the complainant who was recommended for compassionate appointment in the year, 2006 itself. In view of the aforesaid development, the petitioner was suspended vide Memo No.782 dated 20.07.2007 by the order of respondent no.2 (Annexure-6 to the writ petition).

17. It is further submitted that vide memo no.829 dated 03.08.2007, after framing of charge, a departmental proceeding was initiated against the petitioner (Annexure-7) in which, Sri Sukhdeo Singh, Deputy Director, Primary Education, was made inquiry Officer and District Education Officer, Bhojpur was made conducting Officer. The suspension of the petitioner was revoked in view of Rule 9 (3) of 2005 CCA Rules vide Memo



No.582 dated 12.06.2009 (Annexure-9) and in the meantime, the inquiry Officer as well as the Presenting Officers were also changed. Since the nature of allegation was very serious against the petitioner, hence, he was again suspended in view of Rule 9 (1)(d) and (x) vide memo no.227 dated 12.02.2014 (Annexure-11).

18. It is submitted that vide Memo No.692 dated 24.09.2015, the inquiry Officer was changed and in place of Sri Ajit Kumar Saha, Sri Arun Kumar Sharma was made inquiry Officer, who submitted his inquiry report on 15.11.2016 vide letter no.1001 (Annexure-20) after considering the show cause reply of the petitioner in which all the charges were proved. Thereafter, vide memo no.1022 dated 24.11.2016, second show cause notice along with inquiry report was asked from the petitioner (Annexure-21). Thereafter, petitioner submitted his reply vide Annexure-22 and after having considered all aspect of the matter, he was dismissed vide memo no.1104 dated 16.12.2016 from the service by respondent no.2 (Annexure-23).

19. Thereafter, the petitioner preferred appeal before respondent no.1, which has also been rejected after considering all aspects of the matter vide memo no.940 dated 05.09.2018 and the order passed by respondent no.2 has been upheld by



respondent no.1. Learned counsel for the State further submits that in this background, the writ application is devoid of merit and the same is liable to be rejected.

20. Considering the argument of the parties and on perusal of the record, this Court is of the considered view that it is an admitted fact that the petitioner has demanded money in the form of bribe and on 09.11.2015 he requested for some documents related to his charges levelled against him, from the Inquiry Officer, which were not provided to him. It is also an admitted fact that during the departmental proceeding, neither the complainant nor any person of the Vigilance Department were examined and only on the basis of certain documents, the Inquiry Officer came to the conclusion that the petitioner was guilty.

21. From bare perusal of the impugned order, it is evident that the same has been passed without considering the explanations of the petitioner, whereby he negated the charges levelled against him and the appeal preferred by the petitioner against the order of punishment had been rejected.

22. Considering this fact, the impugned order dated 05.09.2018 bearing Memo No.940 is hereby set aside.

23. In light of the *Pankaj Kumar case (supra)* and the case at



present, I am of the view that a welfare state must prioritize the protection of its citizens while ensuring that its officers fulfill their duties with due diligence and in accordance with the law outlined in relevant statutes. Therefore, it is imperative for the Chief Secretary of the Government of Bihar to take necessary and appropriate steps to provide training or organize workshops on the “Disciplinary Rules and Procedures” for officers acting as Disciplinary Authorities across various departments.

24. Accordingly the writ petition is allowed.

25. Let a copy of this judgment be transmitted to the learned Advocate General, Bihar and the Chief Secretary, Government of Bihar for taking corrective steps in light of the observations made in this judgment.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	30.09.2024
Uploading Date	08.10.2024
Transmission Date	NA

