

(1994) 03 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C. No. 7562 of 1993

Kamal Kishore Mishra

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-03-1994

Acts Referred:

Citation : (1994) 03 PAT CK 0049

Hon'ble Judges : Gurusharan Sharma, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Arun Kumar Ambastha, for the Appellant; D.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

G.C. Bharuka, J.—The present writ application has been filed by the Petitioner for quashing the order dated 26-6-91 (Annexure 6) passed by the District Superintendent of Education, Purnea, by which he along with Anr. person has been subjected to certain punishment in a departmental proceeding as also the order dated 5.1.91/11.2.93 (Annexure-7) passed by the Divisional Commissioner affirming the aforesaid order of punishment as an appellate authority.

2. At the material time the Petitioner was working as an assistant teacher in the Middle school, Belsara, Raniganj, in the district of Araria. The Deputy Development Commissioner issued a show-cause notice dated 30-6-89 (Annexure 1) to the Petitioner requiring him to show cause as to why a departmental proceeding be not initiated against him because he has obstructed in execution of the distress warrant for realisation of dues against Ex-Mukhia and has thus interfered with the execution of the Government work. The Petitioner filed his show cause on 17.7.89 which is at Annexure-2. By an order dated 17th August, 1989 (Annexure 3) issued by the District Superintendent of Education under the order of the Deputy Development Commissioner, the Petitioner, was put under suspension and was also served with a charge-sheet (Annexure 4) containing in substance the charges as mentioned in Annexure-1, referred to

above. The Petitioner again filed his detailed show cause. Thereafter the impugned order dated 26-6-91 (Annexure 6) was passed by the Respondent District Superintendent of Education stating therein that under the orders of the District Magistrate and the Deputy Development Commissioner, his suspension has been revoked subject to the punishment of stoppage of three increments and payment of only subsistence allowance during the period of suspension. This order has been affirmed by the Divisional Commissioner by his order as contained in Annexure 7. I need not enter into all the questions which have been raised for assailing the impugned order since the present writ application has to be decided on the question of jurisdiction itself, as decided in a Bench decision of this Court in the case of Murari Pandey and Ors. v. The State of Bihar and Ors. reported in 1994 (1) BLJ 53 wherein it has been held that,

In absence of the statutory Rules which are still to be framed by the State Government under the provisions of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act 1976, the power to take disciplinary actions and effect suspension as an interim measure has to be culled out from the aforesaid two notifications. Keeping in view the settled Rule of Interpretation, the provisions of 1985 notification being later should be deemed to have impliedly repealed the provisions made under 1980 Notification and in that view of the matter the only reasonable and permissible legal inference is that the disciplinary actions can be taken only by the Establishment Committee; and the District Superintendent of Education being its Member Secretary has to act in accordance with the decisions of the said Committee. Earlier in some of the cases view had been taken that the said power has to be exercised by the District Superintendent of Education under the orders of the District Magistrate, but that view was taken since 1985 notification was not brought to the notice of the Court and as such, view taken earlier in some of the cases should be deemed to be inoperative.

3. Keeping in view the law as stated above since in the present case the impugned orders have been passed under the orders of the District Magistrate and the Deputy Development Commissioner, the same cannot be sustained in the eye of law and are accordingly quashed.

4. Anyhow it will be open for the Establishment Committee to take appropriate steps for initiating disciplinary proceedings against the Petitioner if it thinks fit and proper and to pass interim and consequential orders in accordance with law. It may be clarified that I have not applied myself to the merits of the charges.

5. The writ application is accordingly allowed to the extent indicated above. There: will be no order as to costs.

Gurusharan Sharma, J.

6. I agree.