

(2005) 03 PAT CK 0038
In the Patna High Court
Case No : CWJC No. 88 of 2000

Sri Kanhaiya Ram

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-03-2005

Acts Referred:

Citation : (2005) 4 PLJR 35

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Kali Prasanna Dubey, for the Appellant; A.K. Choudhary and Soni Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner has prayed for quashing of order dated 29.6.98 contained in Annexure-6, whereby District Superintendent of Education, Kaimur (Bhabhua) has communicated to the petitioner that District Education Establishment Committee, Kaimur in its meeting dated 12.6.98 has decided to impose upon the petitioner, a Teacher of Primary School, Umapur Bhagwanpur, under suspension, the punishment of stoppage of one annual increment with cumulative effect. At the same time, petitioner was ordered to be released from suspension and it was ordered that for the suspension period he would be entitled for no salary beyond subsistence allowance.

2. Learned counsel for the petitioner has submitted that since the respondents chose to communicate charges and held a full-fledged departmental enquiry as per procedure under Rule 55 of Civil Services (Classification, Control and Appeal) Rules, 1930, hence, even if they decided to impose a minor penalty, they are under an obligation to supply a copy of the enquiry report so that petitioner may represent against the findings before decision by the disciplinary authority. In support of this proposition he has placed reliance upon a Division Bench Judgment of this Court in the case of Anarsi Ram Vs. State of Bihar and Others, .

3. Learned counsel for the petitioner further submitted that in context of other service rules there are decisions to the effect that withholding of annual increment with cumulative effect is a major punishment and hence it was all the more necessary for the respondents to supply a copy of enquiry report to the petitioner before passing order of punishment. Learned counsel for the State has controverted this submission by producing before this court a copy of Bihar State Nationalised Primary School Teachers (Transfer and Disciplinary Proceeding) Rules, 1994 to show that according to Rule 8 of the Rules which govern cases of Teachers like the petitioners, clearly describes such punishment to be a minor one. Once the applicable rules categorise a punishment as major or minor, there is no scope to decide otherwise. Decision in respect of other rules will not apply to this case. However, it has been fairly submitted by learned counsel for the State that since 2002, Rule 8 has been amended and punishment of stoppage of increment with cumulative effect is no longer in list of minor punishments.

4. The last contention of learned counsel for the petitioner is that even in the matter of taking a decision regarding payment for the suspension period opportunity of hearing by way of representation must be given in case the authority proposes to withhold salary or any part thereof for the said period.

5. Learned counsel for the State has pointed out to Rule 10 of the aforesaid rules and has submitted that forum of appeal has been provided and petitioner can be remitted to the appropriate forum. Since the writ petition has remained pending before this Court for the last 5 years and the grievance of the petitioner mainly relates to violation of principle of natural justice, hence, this Court finds it just and proper to dispose of this writ petition on merits.

6. This Court finds merit in the first and last submission advanced on behalf of the petitioner. Following the Division Bench Judgment it is held that it was necessary for the respondents to supply a copy of enquiry report before taking a decision on the basis thereof in the departmental proceeding. For that the matter has to be remitted back to the disciplinary authority.

7. In order to avoid further delay it is noticed that copy of the enquiry report has now been made available to the petitioner by annexing the same as Annexure-B to the counter affidavit. Hence, while remitting the matter back to the disciplinary authority, respondent No. 4 the District Superintendent of Education, Kaimur (Bhabhua), the petitioner is directed to submit his objection to the enquiry report before respondent No. 4 within a period of six weeks from today alongwith a copy of this order. He is also given liberty to place all the relevant facts before respondent No. 4 for making a prayer that he should be paid full salary for the period of suspension. On receipt of such materials the disciplinary authority shall proceed to take a decision on the basis of enquiry report and petitioner's comments at an early date preferably within a further period of 2 months. The impugned order contained in Annexure-6 shall be treated to have been quashed and petitioner shall be governed by a fresh decision that may be taken by the disciplinary authority in accordance with this order. The writ petition

is allowed to the aforesaid extent.