

**Binod Kumar Mandal Vs. Education**

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**Court :** Jharkhand

**Decided On :** Apr-21-2017

**Appellant :** Binod Kumar Mandal

**Respondent :** Education

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 4925 of 2012  
Binod Kumar Mandal son of Buddhinath Mandal, resident of Satya Nagar, Near  
Block Field, North West Corner, Street No.2, P.O., P.S. and District Godda,  
(Jharkhand). .. Petitioner Versus 1. The State of Jharkhand.

2. The Director, Primary Education, Government of Jharkhand, Project Building,  
P.O. Dhurwa, P.S. Jagarnathpur, District-Ranchi.

3. The D.S.E., Godda, P.O., P.S. & District Godda.

4. The Block Education Extension Officer, Godda, P.O., P.S. & District Godda.

Respondents ----- CORAM: HONBLE MR. JUSTICE PRAMATH PATNAIK  
----- For the Petitioner : M/s Saurav Arun & Mr. Deepak Kr. Dubey, Adv. For  
the Respondents : Mr. Rishikesh Giri, J.C. to G.P.II. CAV on:26th October, 2016  
Pronounced on 21/04/2017 Per Pramath Patnaik, J.:

1. In the instant writ application, the petitioner has inter alia prayed for quashing  
the memo no.1554 dated 25.05.2012 vide Annexure-12 to the writ application  
pertaining to dismissal from services.

2. Shorn of unnecessary details, the facts, as disclosed in the writ application, is that the petitioner was appointed on 01.08.2006 as Assistant Teacher, Primary School, Kundaha, Godda East. While continuing as such at primary school, Sagar Sunderpahari, on the basis of a sham inspection the petitioner was put under suspension vide letter dated 17.11.2011 on the ground of absenteeism, and commissions and omissions on the part of the petitioner. Thereafter, the charge sheet dated 29.11.2011 containing 10 charges were levelled against the petitioner as evident from Annexure-3 to the writ petition. After receipt of the suspension order the petitioner submitted his reply repudiating each and every charges levelled against him, requesting the respondent to exonerate him from all the charges levelled against him. Thereafter, the enquiry officer conducted enquiry in a very perfunctory manner without affording reasonable opportunity to the petitioner nor the petitioner was allowed to adduce any evidence. The enquiry officer submitted its report. The respondent authorities issued second show cause notice and the petitioner submitted his reply to the second show cause notice. Thereafter, the disciplinary authority on the reply 2 to the second show cause and the enquiry report dismissed the petitioner from services vide letter dated 25.05.2012 Annexure-12 to the writ application. The School Managing Committee which was constituted by the Government to look into the functioning of the school requested the District Superintendent of Education vide letter dated 18.06.2012 refuting the allegations levelled against the petitioner as evident from Annexure-13 to the writ petition. Left with no other alternative and efficacious remedy, the petitioner being aggrieved with the impugned order, has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for redressal of grievances.

3. Learned counsel for the petitioner has strenuously urged that the so called enquiry report which is the basis for imposition of the impugned order of punishment of dismissal from services, is perverse since no witness has been examined by the respondent-enquiry officer nor the villagers have been examined in the proceeding and the enquiry has been completed in a summary manner, and the petitioner on the basis of surmises and conjectures has been held guilty. Learned counsel for the petitioner further submits that the enquiry officer has exceeded its jurisdiction in recommending infliction of major punishment, which he

was not legally authorized to do. Learned counsel for the petitioner further submits that the complaints which was alleged to have been made by the villagers and on the basis of which the proceeding has been initiated, has not been provided to the petitioner, which has materially affected in the outcome of the proceeding, therefore, the proceeding has been vitiated and the punishment basing on this perfunctory enquiry could not be legally sustainable. Learned counsel for the petitioner further submits that the imposition of punishment of dismissal from services does not commensurate to the charges levelled against the petitioner. Hence, considering the proved misconduct, the punishment inflicted upon the petitioner is grossly disproportionate, excessive to the alleged charges and therefore, the petitioners case ought to be considered afresh, on the principles of doctrine of proportionality so far as quantum of punishment is concerned. In this regard, learned counsel for the petitioner has relied upon the judgment of the Honble Apex Court reported in (2013) 6 SCC602(S.R. Tewari vs. Union of India and Another) (para 24 to 27).

4. The last limb of argument advanced by the learned counsel for the petitioner is that the entire case is based on no evidence. Starting from very 3 initiation of proceeding till its culmination, there has been breach of principles of natural justice and the findings of the enquiry officer is perverse and the entire proceeding is based on no evidence. In this respect, learned counsel for the petitioner has referred to the judgment of the Honble Apex Court reported in (1999) 2 SCC10(Kuldeep Singh vs. Commissioner of Police and Ors.) (para-6, 9 and 10). Learned counsel for the petitioner submitted that the enquiry officer has recommended for punishment which is cryptic and bad in law. In this respect, learned counsel for the petitioner has referred to the judgment of the Honble Apex Court reported in AIR 1986 SC1571 5. Controverting the averments made in the writ application, a counter affidavit has been filed on behalf of the respondents, wherein it has been inter alia submitted that the Primary School, Dhopahari, Block-Sunderpahari was found closed at the time of inspection dated 16.11.2011 by the Deputy Commissioner, Godda and the petitioner was found absent without information. The villagers complained to the Deputy Commissioner, Godda against the petitioner, so the then District Superintendent of Education, Godda issued a letter vide memo no.17.11.2011 for suspension of the petitioner. Thereafter,

charge sheet has been issued by the then District Superintendent of Education, Godda and all the allegations have been proved during the enquiry and the enquiry officer recommended for punishment to the petitioner. Thereafter, the petitioner submitted his explanation dated 25.02.2012 accepting his mistake/guilt. Thereafter, on the basis of the findings of the enquiry officer, the matter was placed before the meeting of District Education Establishment Committee, Godda and it was discussed in the Committee on 24.05.2012, and the Committee took entire matter minutely and passed a resolution to terminate the petitioner from services as evident from Annexure-C to the counter affidavit.

6. Mr. Rishikesh Giri, J.C. to G.P.II appearing for the State has reiterated his submission made in the counter affidavit vociferously submitted that if the teacher is indisciplined, he cannot inculcate discipline amongst the students. Since most of the charges levelled against the petitioner have been proved, hence just adequate and proper punishment has been inflicted, basing on the proved misconduct. 4 7. Having heard learned counsel for the parties and on perusal of the records, it appears that the petitioner has been able to make out a case for interference, due to the following facts and reasons: (I) On perusal of the enquiry report, it would be apparent that the enquiry officer has recommended for imposition of punishment, which is not duty of an enquiry officer. Law is well settled that the duty of the enquiry officer is to say, as to whether charges levelled against the delinquent are proved or not. But, under no circumstances, the enquiry officer has any authority under law for recommending to the disciplinary authority regarding imposition of punishment. (II) It would be apposite to refer the relevant paragraph of the Honble Apex Court reported in (2008) 8 SCC236(State of Uttaranchal and Ors. vs. Kharak Singh), wherein at paragraph 18, it has been held as under:

18. Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under: During the course of above inquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not have the right to continue in the government service and it is recommended to dismiss him from the service with

immediate effect. (emphasis supplied) Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect. (III) That the contention of the petitioner that he has never been given opportunity of examining, cross examining or adducing evidences nor he has been given personal hearing in the departmental proceeding, has not been denied in the counter affidavit. Therefore, the assertion of the petitioner is bound to be accepted on the ground of doctrine of non traverse. 5 (IV) Upon perusal of the counter affidavit, it would be seen that the respondents have stated that the decision of termination has been taken against the petitioner as per the direction given by the Deputy Commissioner, Godda. But, the Deputy Commissioner is not the appointing authority and the disciplinary authority is the Deputy Superintendent of Education, Godda, therefore, at the behest and dictates of Deputy Commissioner, the District Superintendent of Education, Godda has terminated the petitioner from services, which is bereft of application of mind by the disciplinary authority, which cannot be justified on the touchstone of Article 14 and 16 of the Constitution of India. (V) In the instant case the charges against the petitioner is of absenteeism. The Honble Apex Court in the case of Krushnakant B. Parmar vs. Union of India and another reported in (2012) 3 SCC178 in paragraph 17 and 18 has been pleased to hold:

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

8. On cumulative effect of the facts, reasons and judicial pronouncements, the impugned order of punishment of dismissal dated 25.05.2012 vide Annexure-12 being not legally sustainable, is quashed and set aside. However, the matter is remitted to the respondent authorities to start the proceeding afresh by giving opportunity of hearing to the petitioner by supplying all relevant documents and conclude the proceeding in 6 accordance with law, preferably within a period of six months from the date of receipt/production of a copy of the order.

9. With the aforesaid direction, the writ petition stands disposed of. (Pramath Patnaik, J.) Saket/-

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