**IN THE HIGH COURT OF PATNA**

CWJC No. 8198 of 2002

Decided On: 08.05.2012

Appellants: **Kunti Devi @ Kunti Kumari wife of Shree Dwarika Prasad, Headmistress, Primary School, Bhawanipur, P.S.-Islampur, District-Nalanda**
**Vs.**
Respondent: **The State of Bihar & Ors.**

**Hon'ble Judges/Coram:**
R.M. Doshit, C.J. & Birendra Pd. Verma, J.

**ORDER**

**Hon'ble R.M. Doshit, C.J.**

1. This petition under Article 226 of the Constitution is filed by a delinquent teacher, the Headmistress of Primary School, Bhawanipur, against the order of punishment dated 24th November, 2001 made by the District Superintendent of Education, Nalanda. The petitioner challenged the order of punishment on the ground that the same was made in violation of the principles of natural justice and the provisions contained in the Bihar State Nationalized Elementary School Teacher (Transfer and Disciplinary Proceeding) Rules, 1994 (hereinafter referred to as 'the Rules of 1994').

2. In support of the petition, the petitioner has relied upon the judgment of this Court (Coram: Justice J.N. Singh) dated 30th April, 2010 passed in CWJC No. 5200 of 2002 Reported in 2010 (2) PLJR 938. (Ashok Kumar @ Ashok Kr. Sinha vs. The State of Bihar & Ors.). The learned Single Judge has, having a contrary opinion, referred this petition to the Division Bench under order dated 30th July, 2010. Accordingly, the matter has been notified before us.

3. It appears that at the time of inspection on 23rd March, 2001 the petitioner was found absent from service and had not opened the school at all. For the said act of dereliction in duty, under order dated 14th May, 2001, the petitioner was placed under suspension. The said order was followed by the impugned order dated 24th November, 2001. For the said act of dereliction in duty, the petitioner has been visited with punishment of withholding of one increment with cumulative effect. It was further directed that for the period spent under suspension, the petitioner will not be entitled to any service benefit except the subsistence allowance.

4. Feeling aggrieved, the petitioner has approached this Court under Article 226 of the Constitution. The challenge to the impugned order is twofold; the impugned order of punishment has been made; first, in violation of the Rules of 1994 and; second, in violation of the principles of natural justice.

5. The petition is contested by the State Government. According to the State Government, no disciplinary proceeding is required to be held against the delinquent for imposition of a minor punishment.

6. Rule 7 of the Rules of 1994 provides for suspension of service. Sub-rule (1) thereof provides, inter alia, for the authorities who can suspend a teacher for unauthorised absence from service; sub-rule (2) thereof provides for suspension of a teacher for any other reason by the District Superintendent of Education or the District Magistrate. Sub-rule (3) thereof provides that the District Superintendent of Education shall call for an explanation. Sub-rule (4) thereof provides for initiation of a departmental proceeding in case the explanation is not submitted or is not found satisfactory. Sub-rule (5) thereof provides for revocation of the order of suspension or termination of the departmental proceeding by the District Superintendent of Education with the approval of the District Magistrate.

7. Sub-rule (1) of Rule 8 of the Rules of 1994 enumerates minor punishments which can be imposed subject to the disciplinary proceeding. The proviso to the said sub-rule (1) provides that for imposition of minor punishment, an explanation should be sought from the teacher. Sub-rule (2) of Rule 8 of the Rules of 1994 provides for the major punishments which can be imposed subject to the disciplinary proceeding. The proviso to the said sub-rule (2) provides that a major punishment will be imposed after holding a departmental enquiry. Sub-rule (3) thereof empowers the District Superintendent of Education to impose a minor punishment. The said sub-rule empowers the District Superintendent of Education to impose a major punishment with the approval of the District Establishment Committee.

8. It appears that the learned Single Judge has relied upon the proviso to the said sub-rule (2) of Rule 8 to hold that in case of major penalty alone a disciplinary proceeding is required. In absence of a similar proviso to sub-rule (1), the learned single Judge has held that for imposition of a minor penalty, no disciplinary proceeding is required.

9. We are unable to agree with the learned Single judge. Sub-rule (1) of Rule 8 opens with the words "Subject to disciplinary proceeding". Hence, in our view, even in absence of a specific proviso to sub-rule (1), a disciplinary proceeding is indeed envisaged for imposition of a minor penalty also.

10. Irrespective of the statutory rules governing the service conditions of the teachers, the principles of natural justice also require a semblance of disciplinary proceeding even for imposition of minor punishment.

11. In our opinion, for imposition of any punishment, the minimum that is required is: (1) framing of charge and service of imputation of charge; and (2) the opportunity of defence. The defence may be supported by oral evidence or documentary evidence.

12. In the present case, as it is apparent, no charge was framed against the petitioner nor was she given an opportunity of defence. In absence of imputation of charge and right to defence, the order of punishment cannot be sustained. True, for imposition of minor punishment, an elaborate disciplinary proceeding is not required. Nevertheless, compliance with the minimal principles of natural justice is a sine qua non.

13. For the aforesaid reason, we affirm the judgment of this Court in the matter of Ashok Kumar @ Ashok Kr. Sinha (supra).

14. The petition is allowed. The impugned order dated 24th November, 2001 made by the District Superintendent of Education, Nalanda against the petitioner (Annexure-1 to the writ petition) insofar as the petitioner has been visited with the punishment of withholding of one increment with future effect is quashed and set aside. The order in respect of the period spent under suspension is not interfered with. The petitioner will be entitled to the restoration of pay and the amount of difference in salary. The petitioner's pay will be restored and the arrears of salary will be paid within eight weeks from today. We clarify that we do not intend to condone the conduct of dereliction in duty. However, in view of long passage of time, the petitioner will not be subjected to disciplinary proceeding afresh for the above referred incidence of 23rd March, 2001.