

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16582 of 2024

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Kusum Kumari D/o Late Bhagirath Prasad Resident of Mohalla- Bhikhna
Pahari, Road No. 06, P.S. Pribahor, Dist- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Social Welfare, Government of Bihar, Patna.
2. The Additional Secretary, Department of Social Welfare, Government of Bihar, Patna.
3. The Joint Secretary, Department of Social Welfare, Government of Bihar, Patna.
4. The Special Secretary, Department of Social Welfare, Government of Bihar, Patna.
5. The Deputy Secretary, Department of Social Welfare, Government of Bihar, Patna.
6. The Director, Integrated Child Development Service (ICDS) - Cum Director (Programme), ICDS Directorate, Department of Social Welfare, Government of Bihar, Patna.
7. The Deputy Director (Programe), ICDS Directorate, Department of Social Welfare, Government of Bihar, Patna.
8. The District Magistrate, West Champaran, Betiya.
9. The District Magistrate, West Madhubani.
10. The District Programme Officer, West Champaran, Betiya.
11. The District Programme Officer, Madhubani.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Pratik, Advocate Mr. Satish Kumar Sinha, Advocate Mr. Nityanand, Advocate
For the Respondents	:	Mr. Kumar Alok SC (7)

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
CAV JUDGMENT
Date : 21-11-2025

This writ petition has been filed for the following

reliefs:-

A. A writ in the nature of certiorari or any other



*appropriate writs(s) / order(s)/direction(s)
for quashing the followings:-*

- (i) The second inquiry report dated 22.08.2014, contained in Letter No. 3801, submitted in Department Proceeding No. 04 of 2013, holding that the charge leveled against the petitioner is proved;*
- (ii) The order dated 26.03.2018, contained in Memo No. 1851, passed by Additional Secretary, Social Welfare Department, Bihar, Patna, by which petitioner has been dismissed from the service;*
- (iii) The order dated 13.09.2024, contained in Memo No.4513, passed by Joint Secretary, Social Welfare Department, Bihar, Patna, dismissing the review petition, filed by the petitioner, in compliance of the order dated 30.04.2024, passed in C.W.J.C. No. 8257 of 2018.”*

B. *A writ in the nature of mandamus or any other appropriate writs(s) / order(s) / direction(s) for the followings:-*

- (i) To hold that the orders under challenge, contained in Annexure-P18, P22 and P24 are non-est in the eye of law,*
- (ii) To hold that orders under challenge are illegal and without jurisdiction;*
- (iii) To hold that orders under challenge are arbitrary and malicious one.*



- (iv) To hold that mere institution of criminal case which is under investigation for last more than 15 years, cannot be sole ground for major punishment.*
- (v) To hold that the petitioner is in continued service till her retirement and she is entitled to full salary and all consequential benefit with up to date penal interest.*
- (vi) To hold that orders under challenge are none speaking one.*
- (vii) To hold that orders under challenge are contrary to the evidence on record.”*

2. It is the case of the petitioner that she was appointed as Child Development Project Officer (C.D.P.O) on 19.05.2008 and was posted at Bettiah and was further given an additional charge of CDPO, Gaunaha. However, one Indu Kumari, the then BDO, Gaunaha, who was holding the charge of C.D.P.O. Gaunaha, was not handing over the aforesaid charge to the petitioner, which was duly reported to higher authorities. After intervention of the District Magistrate and District Programme Officer, the petitioner was able to assume the aforesaid additional charge which caused serious annoyance to the then B.D.O.- Indu Kumari.

3. It is the further case of the petitioner that the



then B.D.O.- Indu Kumari had received a secret information regarding illegal collection of money being carried out at the instance of the petitioner, head assistant and other persons posted at the said office. Acting upon the said secret information, the then BDO reached the office of CDPO, Gaunaha on 25.06.2009 and found Rs.43,750/- along with three pages containing details of collection made from 67 *Sevikas*. It is further submitted that this incident was video-graphed also and based on the statement of the then BDO, Gaunaha P.S. Case No.23 of 2009 (Special Case No. 25 of 2009) was registered and the investigation of the case is still pending. Consequently, the petitioner was suspended vide order dated 03.07.2009 and a departmental proceeding was initiated against her *vide* order dated 06.07.2009. The petitioner appeared in the departmental proceedings and submitted a detailed show cause reply.

4. It is the further case of the petitioner that after considering all material facts, the enquiry report dated 18.04.2011 was submitting wherein the charges against the petitioner were not found to be true and accordingly, recommendation was made for revoking the suspension of the petitioner. However, differing with the findings of the enquiry officer, the disciplinary authority vide order dated 20.01.2012



ordered for fresh departmental enquiry for the reason that the statement of witnesses i.e. *Sevikas* were not examined during the disciplinary proceeding. During the pendency of the re-inquiry, the suspension of the petitioner was revoked and she was ordered to give her joining to the concerned office of District Programme Officer, *vide* Memo No.608, dated 14.02.2013 and subsequently she was posted as C.D.P.O. at Gayghat, Muzaffarpur and thereafter, she was posted at Phulparas, District Madhubani on 08.08.2015.

5. It is also the case of the petitioner that when she was posted as C.D.P.O., Gayghat, Muzaffarpur, she was deputed for election duty and therefore she could not appear in the re-departmental inquiry on some dates and thereafter, the petitioner appeared in re-enquiry and submitted her show cause stating therein that she has already submitted all the relevant papers in the earlier departmental proceeding and also requested to conclude the re-inquiry proceeding. On 06.09.2013, the petitioner had given an application to the then C.D.P.O., Gaunaha requesting therein to send the certified copy of the cash-book for the period 25.03.2009 to July 2009, i.e. the alleged period of allegation. On 05.03.2014, the petitioner *vide* letter no.74, gave an application to the inquiry officer stating



therein that she is deputed in election duty and for that reason she prayed for staying the inquiry but the inquiry officer did not pass any order on the application of the petitioner and had stated in the inquiry report that on the day when the petitioner was required to present herself in the departmental inquiry, the petitioner neither appeared in departmental inquiry nor adduced any evidence to show that petitioner was deputed in Parliamentary Election 2014.

6. It is also the case of the petitioner that the Inquiry Officer in a very mechanical manner treated the allegation of F.I.R. to be true and held the petitioner guilty and submitted inquiry report on 14.08.2014 which shows that the Inquiry Officer had failed to appreciate that the investigation of Gaunaha P.S. Case No. 23 of 09 (Special Case No. 25 of 2009) which is still going on and charge sheet was not submitted till date. The petitioner had already appeared in the Departmental inquiry and submitted her show cause that she has already submitted all the relevant paper/evidence which was available to her in the earlier inquiry and she had no further papers or evidence with her, as such, the departmental inquiry may be concluded considering the evidence adduced by her in earlier inquiry. However, the Inquiry Officer did not call for the records



of earlier inquiry and came to a conclusion that the petitioner had no evidence or witness in her defense.

7. It is the submission of the petitioner that from the inquiry report, it is apparent that several *Sevikas* were examined on 29.05.2012 by the Conducting Officer but the Inquiry Officer did not mention about the statement of the said *Sevikas* as to what they have said in the inquiry against the petitioner as the *Sevikas* have not supported the charges leveled against the petitioner, therefore, with a hostile attitude, the Inquiry Officer, in re-inquiry has not discussed about the statement of the *Anganwari Sevikas*. The Inquiry Officer has not come to conclusion that allegations levelled against the petitioner are proved on the basis of materials available on record, rather he came to the conclusion that petitioner has no evidence or witness in her defence and she failed to disprove the charges leveled against her and therefore, such finding is absurd and fit to be set aside. Therefore, it has been emphasized that the respondent authorities acting as a *quasi-judicial* authority are under the obligation to prove the charges on the threshold of preponderance of possibilities based on the relevant evidence / materials but in the present proceeding the onus has been shifted on the petitioner.



8. It is the submission of learned counsel for the petitioner that from the inquiry report, it is apparent that except the F.I.R. of Gaunaha P.S. Case No. 23/09 (Special Case No. 25.09), which is under investigation, no other evidence has been adduced against the petitioner at all. He also submits that the Inquiry Officer has failed to appreciate the fact that the office of the petitioner was searched and alleged money was seized by Indu Kumari, the then B.D.O.-cum-C.O., Gaunaha, who was not competent to do so and even the copy of seizure list was not given to the petitioner.

9. Learned counsel for the petitioner further submits that the aforesaid Indu Kumari, the then B.D.O.-cum-C.O., Gaunaha, who is the informant of Gaunaha P.S. Case No. 23/09 (Special Case No. 25 of 2009), is neither the superior officer of the petitioner nor the Police Officer. As per seizure list of Gaunaha P.S. Case No. 23/09 (Special Case No. 25/09) it is apparent that a video was prepared but during the departmental inquiry same was produced before the Inquiry Officer. In furtherance, acting upon the inquiry report, the Disciplinary Authority issued the second show cause notice to the petitioner without the relevant paper/evidence of the inquiry *vide* letter no. 4117, dated 05.09.2014. In response to the second show cause



notice, the petitioner gave an application to the Disciplinary Authority on 07.10.2014 requesting therein to make available certain papers/enclosures of show cause notice but the authority concerned did not serve any such paper to the petitioner, yet the petitioner gave a detailed reply to the show cause stating all the relevant facts and praying therein to exonerate herself from the charges but the Disciplinary Authority without applying his own mind and without considering the reply of the petitioner to the second show cause, dismissed the petitioner from service, *vide* order dated 26.03.2018.

10. It is the submission of learned counsel for the petitioner that the Disciplinary Authority without assigning any reason, came to the conclusion that the reply of the petitioner to second show cause is not satisfactory, which is against the provisions of the Bihar CCA Rules. Further Gaunaha P.S. Case 23 of 2009, was lodged against the petitioner, Ram Baran Ram (Head Assistant) and Shashi Bhushan Tiwary but departmental proceeding was initiated only against the petitioner and she has been dismissed from the service.

11. Learned counsel for the petitioner submits that the petitioner had earlier approached this Court in C.W.J.C. No. 8257 of 2018 against the order dated 22.08.2014 and order



dated 26.03.2018 and a coordinate Bench of this Court after hearing the parties, by an order dated 30.04.2024, had disposed off the aforesaid writ petition directing the petitioner to file memorial / review under the CCA Rules. In compliance of the order of this Court, the petitioner filed Review Application but the same has also been dismissed vide order dated 13.09.2024, contained in memo no. 4513, holding that the petitioner has not raised any new fact in the Review Application and further holding that the disciplinary authority, after considering the second show cause of the petitioner, has already found the charges leveled against the petitioner to be true and accordingly the order of dismissal of the petitioner has been passed.

12. Learned counsel for the petitioner further submits that from perusal of the order dated 13.09.2024, it will appear that the revisional authority has passed the order without applying its own mind and on the same grounds, as mentioned in the order dated 26.03.2018, has passed the order of rejecting the review application.

13. Learned counsel for the State, relying on the submissions made in the counter affidavit, has opposed the prayer of the petitioner by submitting that the same is devoid of merits and the authorities have passed reasoned and speaking



orders after hearing the petitioner.

14. I have heard and considered the submission of the parties and have also perused the materials on record.

15. The petitioner while working as CDPO, Gaunaha, was suspended since a criminal case was registered on the allegation that the petitioner and others were engaged in illegal extortion of money from the *Anganwadi Sevikas* and the cash collected therefrom was kept in the office drawer. During the disciplinary enquiry, the enquiry officer had found that the charges are not proved against the petitioner however, the disciplinary authority disagreeing with the enquiry report, had ordered for a fresh enquiry on the ground that the *Sevikas/witnesses* were not examined during the disciplinary proceedings. From the perusal of the second enquiry report, it appears that the respondent authorities have still failed to adduce and appreciate any evidence/witness to establish the charges alleged against the petitioner. Moreover, the respondents have totally inverted the *onus* and shifted it directly on the petitioner to prove her innocence.

16. This Court, in the case of *Kumar Upendra Singh Parimar vs. B.S. Cooperative Land Development Bank Limited & Ors.* reported in *1999 SCC OnLine Pat 1075 : 2000*



(3) *PLJR 10*, has held as under:-

"11. Under those rules there are detailed provisions for holding regular departmental enquiry. In holding of a departmental enquiry it is required to prove the charges against the delinquent employee by producing departmental witnesses and the by examining them by the enquiry officer. If the delinquent employee does not attend the enquiry even then the department has to prove the charge by examining the witnesses in support of its own documents. In the departmental enquiry no onus is cast upon the delinquent employee to prove the charges. The charges have to be proved by the department. If no witness is called by the department in support of the charges in that case it should be held that the department has not proved its case and in such a situation the enquiry officer cannot record the findings with regard to guilt against the delinquent employee just because the delinquent employee is absent.

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14. Reference in this connection may be made to the Constitution Bench Judgment of the Apex Court in the case of *Union of India vs. H.C. Goel*, reported in *A.I.R. 1964 S.C. 364*.
15. His Lordships *Gazendra Gadkar, J.* His



Lordship's then was, summarised the law in this respect as follows:-

"It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held statutory rules. under the statutory rules."

16. **Since the aforesaid principle laid down by the Constitution Bench of the Supreme Court has been subsequently followed in many other cases, and has not been departed from till today, this Court cannot accept the bald statement urged by the learned counsel for the respondent that since the charges are based upon the documents so no witnesses need be examined to bring home the charges.**

17. The other grounds on which no witnesses have been produced in the said enquiry is that the petitioner has not demanded an oral enquiry.

18. This Court cannot accept this argument for the reasons already indicated when an enquiry has been ordered by the



*disciplinary authority and an enquiry officer has been appointed it is not for the petitioner to demand that the department must produce witnesses to prove its case. **The onus is never on the delinquent employee, on the other hand, onus is on the department to prove the charges and it is for them to produce their witnesses in support of his case against the delinquent employee.***

19. *Therefore, in the facts of this case, this Court is constrained to hold that by not producing any evidence in support of its case, the respondent authorities have failed to prove the charges against the delinquent employee. Where charges have not been proved the enquiry report loses all its importance and the punishment imposed on the petitioner cannot be sustained. When a person is thrown out of employment, it must be on the basis of a procedure which is reasonable, just and fair. (See D.K. Jadav vs. J.M.A. Industries Ltd., reported in (1993)3 SCC page 259: 1994(2) PLJR (SC)55.” (emphasis supplied).*

17. From the perusal of the report of enquiry officer, it is apparent that no evidence has been adduced in support of the memo of charge in the departmental proceeding rather the F.I.R. which has not yet culminated into a charge-



sheet, has solely been relied without adducing or recording the statement of the witnesses. Since the petitioner has denied the charges levelled against her, it was incumbent upon the respondent-department to prove the charges on the threshold of preponderance of possibilities based on relevant materials. Since the enquiry officer has failed to adduce any material in support of the charges, the finding of the enquiry officer holding the petitioner guilty is totally perverse and as such the consequential orders of disciplinary authority cannot be sustained. Even the disciplinary authority has failed to appreciate relevant materials before arriving at a conclusion that the petitioner is guilty of the charges levelled against her. Moreover, it appears that the disciplinary authority while disagreeing with the first enquiry report wherein the charges were not found to be proved against the petitioner had initiated a second enquiry on the ground that the witnesses/*sevikas* were not examined but from the perusal of the second enquiry report, it appears that still no witnesses / *sevikas* have been considered while arriving at the conclusion that the petitioner is guilty of the charges levelled against her. Only the registration of an F.I.R. against the petitioner has been the sole basis for arriving at a conclusion of guilt and ultimately imposing a major punishment of dismissal from the service,



however, in the said F.I.R. the investigation is still going on for the last 15 years and even charge-sheet has not been filed.

18. Considering the aforesaid discussions, the imposition of major penalty of dismissal from the service is unsustainable. Accordingly, the impugned order dated 26.03.2018, by which the petitioner has been dismissed from the service and the revisional order dated 13.09.2024 by which the revision application of the petitioner has been rejected are hereby quashed and set aside.

19. Since the impugned order, by which the petitioner has been dismissed from the service, has been quashed by this Court, the petitioner will be entitled to all admissible consequential and monetary benefits in accordance with law.

(Sandeep Kumar, J)

vikas/-

AFR/NAFR	N.A.F.R.
CAV DATE	14.10.2025
Uploading Date	21.11.2025
Transmission Date	

