

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21937 of 2014

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Smt. Pratima Kumari, Wife of Sri Sudhir Kant Roy R/o Village/
Mohallaha- Maharour, P.S- Rosera, Town and District Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director Secondary Education, Bihar Patna.
3. Regional Dy, Director of Education, Darbhanga Division
Darbhanga.
4. The District Education Officer, Samastipur.
5. The District Programme Officer, S.E, Samastipur.
6. The Accountant General, Bihar, Beerchand Patel Path, Patna.

... .. Respondent/s

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*Service Law---Bihar Government Servants (Classification, Control and Appeal) Rules, 2005---Bihar Pension Rules---Rule 43 (b)---
Departmental Enquiry---writ petition to challenge the order of
punishment whereby 5 per cent of pension has been forfeited on the
charges of violation of the orders of the superior authority, dereliction of
duty and delay in complying the order of the Supreme Court---contention
that since on the date of retirement, no departmental proceeding was
initiated/pending against the petitioner under Bihar Government
Servants (Classification, Control and Appeal) Rules, as such, the
conversion of proceeding into a proceeding under Rule 43 (b) of the
Bihar Pension Rules, was not warranted and without jurisdiction---
further argument that that the enquiry report along with the second show*

cause notice was not communicated to the petitioner and the enquiry was not conducted as per the established procedure inasmuch as neither the Presenting Officer produced any documentary evidence nor oral witnesses were examined by the Department during the course of enquiry---Held: it is established that in the departmental proceeding, the Department has to prove the charges by producing cogent documentary as well as oral evidence. The onus is not on the delinquent employee, but the onus is on the Department to prove the charges---An inquiry officer acting as a quasi judicial authority is in the position of an independent adjudicator and is not supposed to be a representative of the department/disciplinary authority---Enquiry Officer merely submitted the enquiry report on his ipse dixit without examining the witnesses and only considering the comment of the Presenting Officer and the defence submitted upon the charges by the petitioner---No second show cause along with the copy of the enquiry report was served upon the petitioner in violation of principles of natural justice---enquiry report and order of punishment set aside---petitioner held entitled to be paid all consequential benefit including the monetary benefits within a period of three months---writ allowed. (Para 1, 6, 8, 10, 21-25)

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shivendra Kishore, Senior Advocate
Mr. Saroj Kumar
For the State : Mr. Akash Raj, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 25-07-2024

The petitioner has challenged the order of punishment, as contained in Office Order No. 2679, dated 11.09.2015, whereby 5 per cent of pension has been forfeited. Consequential relief prayed for by the petitioner is for a direction to the respondents to pay the arrears towards pension.

2. The brief facts of the case, as per the pleadings of the petitioner, is that while the petitioner was posted as Headmistress in Golf Field Railway Colony Inter School, Samastipur, one employee, namely, Shiv Nandan Mahto filed writ application,



being CWJC No. 516 of 1998. the writ application was allowed by order, dated 23.09.2010, directing reinstatement of Shiv Nandan Mahto, without back wages. L.P.A. No. 1859 of 2010 was filed by Shiv Nandan Mahto, which was dismissed on 03.08.2011. He, then, filed S.L.P. (Civil) No. 312 of 2012 before the Supreme Court, which was allowed vide order, dated 08.07.2013, with direction to pay him the entire back wages for the period he was kept out of the service till his reinstatement, with 9 per cent interest, within a period of three months.

3. In the light of the aforesaid order, the District Education Officer, Samastipur, vide various letters issued in the year 2013, directed the petitioner to ensure payment of the arrears of salary to Shiv Nandan Mahto.

4. Letter No. 54, dated 06.02.2014, was served upon the petitioner to explain as to why a departmental proceeding be not initiated against her for violation of the orders of the superior authority and by letter no. 198/13, dated 28.02.2014, directed the petitioner to make payment of arrears of salary to Shiv Nandan Mahto.

5. Upon retirement, the petitioner submitted her pension papers on 31.05.2014 in the office of the District Education



Officer, Samastipur, who, in turn, forwarded the same to the Education Department.

6. In the mean while, the Director, Secondary Education, vide Office Order issued under Memo No. 1729, dated 16.06.2014, initiated departmental proceeding against the petitioner under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, on the charges of violation of the orders of the superior authority, dereliction of duty and delay in complying the order of the Supreme Court. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga, was appointed as the Enquiry Officer and the District Programme Officer (Secondary), Samastipur, was appointed as the Presenting Officer.

7. The petitioner submitted her defence to the charges levelled against her before the Enquiry Officer on 20.08.2014, denying the charges, specifically stating that the order of the Supreme Court and the orders of the superior authority have already been complied much before the date of initiation of the departmental proceeding. In her defence, the petitioner stated that service book of Shiv Nandan Mahto was not available in the school and the duplicated service book was reconstructed. Shiv Nandan Mahto remained posted as Clerk at 4-5 schools, details



whereof was not available in the school. The details of payment received by him at his earlier place of posting were also not available and even his pay was not fixed and arrears of salary along with 9 per cent interest was pertaining to the period of approximately 30 years. Due to the sincere efforts of the petitioner, duplicate service book was constructed and details of payment received by Shiv Nandan Mahto at earlier place of posting were obtained and also the pay of Shiv Nandan Mahto was fixed, followed by its confirmation/ approval by the Accounts Section, Samastipur, thereafter amount of arrears of salary with interest was calculated. Bills were presented before the Treasury, which raised objection, which were met by the petitioner and thereafter the entire payment of arrears of salary with interest, as directed by the Supreme Court, was paid to Shiv Nandan Mahto, on 09.02.2014. The petitioner retired on attaining the age of superannuation on 31.05.2014.

8. Learned Senior Counsel for the petitioner argued that after retirement of the petitioner on 31.05.2014, the relationship of the master and servant ended and it was not open to the respondents to initiated departmental proceeding against the petitioner under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. The Office Order, bearing



Memo No. 1863, dated 17.06.2015, seeking to convert the non-existing proceeding into a proceeding under Rule 43 (b) of the Bihar Pension Rules, is illegal. Since on the date of retirement, no departmental proceeding was initiated/pending against the petitioner under Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, as such, the conversion of proceeding into a proceeding under Rule 43 (b) of the Bihar Pension Rules, was not warranted and without jurisdiction.

9. In terms of Rule 43 (b) of the Bihar Pension Rules, a proceeding can be initiated by the Appointing Authority and as per proviso (a) (i), the proceeding under Rule 43 (b) can only be initiated with the sanction of the State Government, but no sanction has been obtained in the present case. Further, proviso (a) (iii) of Rule 43 (b) requires conduct of departmental proceeding in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

10. Learned Senior Counsel further submits that the enquiry report, dated 16.05.2015, along with the second show cause notice, dated 25.06.2015, was not communicated to the petitioner at her home address recorded in the service book where the petitioner was residing after her retirement, as such, the petitioner could not submit the reply to the second show cause.



The Disciplinary Authority has wrongly recorded in the impugned order that after considering the reply of second show cause submitted by the petitioner and the same having been found not satisfactory, the order of punishment has been passed. This is completely an error of record. The enquiry was not conducted as per the established procedure applicable for departmental enquiry inasmuch as neither the Presenting Officer produced any documentary evidence nor oral witnesses were examined by the Department during the course of enquiry. The Enquiry Officer held the charges proved on his *ipse dixit* and without any evidence in this regard. Even, the Presenting Officer, in his representation, submitted before the Enquiry Officer, has stated that the delinquent may be absolved of the charges of dereliction of duty and insubordination. Since, the second show cause along with the enquiry report was not served upon the petitioner, the impugned order of punishment, dated 11.09.2015, is in violation of principle of natural justice also.

11. Learned Senior Counsel has placed reliance in the cases of **Shambhu Saran v. The State of Bihar and Others**, reported in **2000 (1) PLJR 665**, **Dr. Usha Jaiswal v. The State of Bihar and Others**, reported in **2012 (1) PLJR 143**, **Uday Singh v. The State of Bihar and Others**, reported in **2017 (1) PLJR 908**



and **Arjun Prasad Sinha v. The State of Bihar and Others**,
reported in **2013 (1) PLJR 801**.

12. On the other hand, learned Counsel for the respondents submits that in course of departmental proceeding, charges levelled against the petitioner were found proved and the petitioner was asked to file reply to the second show cause. The reply submitted by the petitioner was not found satisfactory. Thus, the punishment of forfeiture of 5 per cent pension amount has been inflicted upon the petitioner.

13. I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the impugned order.

14. In the supplementary affidavit filed by the petitioner on 18.09.2023, the petitioner has specifically averred that second show cause, dated 25.06.2015 and copy of the enquiry report, dated 16.05.2015, was not communicated/served upon her at her home address recorded in the service book, where the petitioner was residing after her retirement. As such, she could not submit her reply in defence of the findings arrived at by the Enquiry Officer.

15. I. A. No. 2 of 2023 was filed by the petitioner for adding some more prayer on 18.09.2023, reiterating her statement



that copy of the enquiry report, dated 16.05.2015, along with second show cause notice was not communicated to the petitioner at her permanent address, as mentioned in the service book.

16. A consolidated counter affidavit has been filed by the respondent-State on 24.06.2024, but there is no denial of the specific statement made by the petitioner in the supplementary affidavit as well as I. A. No. 2 of 2023 regarding service of copy of enquiry report, along with second show cause notice.

17. From perusal of the impugned order of punishment, it appears that the Disciplinary Authority has recorded the fact that the petitioner has submitted the reply of the second show cause. A copy of the reply allegedly submitted by the petitioner has not been brought by the respondents. Statement of the petitioner that she was not served upon the copy of the enquiry report, along with second show cause has not been denied by the State in the counter affidavit.

18. Second show cause notice, dated 25.06.2015 (Annexure 7) goes to show that the Director, Secondary Education, sent the notice to the petitioner at school address; whereas, the petitioner had already been retired from the school way back on 31.05.2014. Contention of the petitioner is correct that the second show cause along with the copy of the enquiry report was not



served upon her at her permanent home address, as available in the service book.

19. Accordingly, it could be concluded that the second show cause, dated 25.06.2015 and copy of the enquiry report, dated 16.05.2015, was not communicated/served upon the petitioner and the reference of the same in the impugned order is nothing but an error of record.

20. On this ground alone, the order of punishment vitiates as violative of principles of natural justice.

21. The manner in which the enquiry was conducted is also not as per the established procedure inasmuch as the Enquiry Officer did not examine any witness during the course of enquiry and also no documentary evidence was produced by the Department/Presenting Officer in order to prove the charges. The Disciplinary Authority, in the impugned order, has mentioned that the petitioner has not produced any concrete evidence/proof in her defence in the second show cause notice. This finding is completely erroneous and misconceived. As of now, it is established that in the departmental proceeding, the Department has to prove the charges by producing cogent documentary as well as oral evidence. The onus is not on the delinquent employee, but the onus is on the Department to prove the charges and it is for



them to produce their witness in support of case against the delinquent employee.

22. An inquiry officer acting as a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case, this procedure has not been observed. No oral evidence has been examined and the documents have also not been proved. The Enquiry Officer has merely submitted the enquiry report on his *ipse dixit* without examining the witnesses and only considering the comment of the Presenting Officer and the defence submitted upon the charges by the petitioner.

23. As such, in my opinion, the enquiry itself got vitiated.

24. In view of the aforesaid discussion, I come to the conclusion that the enquiry was conducted in gross violation of established procedure and is violative of principles of natural justice. The Enquiry Officer has failed to discharge his duty as an independent adjudicator. No second show cause along with the



copy of the enquiry report was served upon the petitioner. Accordingly, in my considered opinion, the entire enquiry as well as the departmental proceeding got vitiated.

25. Accordingly, the enquiry report, dated 16.05.2015, as well as the order of punishment, dated 11.09.2015, are hereby set aside.

26. The petitioner is entitled to be paid all consequential benefit including the monetary benefits within a period of three months from today.

27. In the result, this writ application is allowed.

28. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	01-07-2024
Uploading Date	25-07-2024
Transmission Date	N/A

