

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2879 of 2015**

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Raj Brind Singh Son of Late Daya Singh, R/o Village + P.O. - Kobil, P.S.  
- Kobil, P.s. - Islampur, District - Nalanda.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department Govt. of Bihar Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Patna.
5. The District Education Officer, Patna.
6. The Accountant General Birchand Patel Path, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sunil Kumar Singh, Adv  
For the State : Mr. Md. Irshad AC to SC 18.  
For the respondent no. 6 : Mr. Dr. Anand Kumar, Adv  
For the Respondent/s : Mr. SC18- N. Hoda Khan

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**CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA**  
**ORAL JUDGMENT**

3      13-04-2015      Heard learned counsel for the parties.

The prayer of the petitioner in this writ  
application reads as follows:-

*“commanding the respondents to make payment of  
arrear of 10 % pension and gratuity to petitioner with effect  
from December 2009 and make payment of 100% pension to  
petitioner on month to month basis. The petitioner further  
prays to make payment of 10-% arrear of pension and  
gratuity with interest of 12% per annum and arrear of  
transport allowance from 2004 to 2009.”*

Learned counsel for the petitioner submits that  
during the pendency of this writ application, the  
petitioner’s grievance of payment of transport allowance  
has been redressed but then the petitioner has not been



paid his remaining 10 per cent pension and gratuity only on account of pending departmental proceeding initiated way back in the year 2007 and has continued ever after his retirement in the year 2009. Learned counsel for the petitioner, in this regard explains that there is no lapse on the part of the petitioner, inasmuch as, whatever was to be done by the petitioner in the departmental proceeding has been punctually done either in course of departmental proceeding or even after receipt of the inquiry report by way of submission of his comment/reaction as well as reply to the second show cause notice.

In this case, counter affidavit has been filed by respondents, wherein, they have sought to explain that the delay in finalizing the issue of payment of 10 percent of pension and gratuity by taking the plea of pendency of departmental proceeding against the petitioner. To that extent, paragraph nos. 10, 11 and 12 of the counter affidavit gives a detail of the action taken in the departmental proceeding. Learned counsel for the State



has also submitted that a person namely, Ram Krishna Prasad Singh who was also involved in same misconduct had already been punished by way of stoppage of 25 per cent of pension and therefore, no different or any lenient view can be taken in the case of the petitioner.

This Court is not at all concerned as to what was done in the case of Ram Krishan Prasad Singh or the punishment that can be inflicted in the case of the petitioner.

A departmental proceeding was initiated against the petitioner way back in the year 2007 by framing of charge on 27.11.2007. The inquiry report of such departmental proceeding was submitted on 16.04.2011, and the petitioner was also given second show cause notice on 05.07.2011. The petitioner is said to have submitted his reply and the matter is said to be still under verification on the defence taken by the petitioner in his second show cause reply. To that extent, paragraph nos. 10, 11 and 12 of the counter affidavit being relevant are quoted hereinbelow:-

*“That on receipt of the aforesaid report from the Regional Deputy Director of Education, Patna Division, Patna the matter was discussed in the department and the petitioner (being a Drawing Disbursing officer of the School in question) including other two person against whom the departmental proceeding were initiated with the respective charges. However vide Memo No. 2906 dated 27.7.2007, a departmental proceeding were initiated against the instant petitioner with charge-sheet against him. Against the petitioner, the following charges were levelled:-*

*(i) Without any departmental or the order of the competent authority, the bill for payment of two teachers of Marwari High School, Patna City, Patna for the period from 18.08.2002 to 22.09.2005 on the basis of bill prepared by the acting Headmaster was passed as the drawing and disbursing officer illegally without examining the bill in the light of government rules and provisions.*

*(ii) With the collusion of the teachers of the Marwari High School, Patna City, Patna namely Sri Ram Krishna Prasad Singh and Sri Manoj Kumar, the bill of Rs. 13,04,435/- was got passed from the sub-treasury Patna City without proper allotment and the same was withdrawn and paid illegally, which is the defalcation of government money.*

*(iii) Irresponsible & reluctance in discharging in duty.*

*11. That the enquiry officer submitted his report vide letter No. 122 dated 16.04.2011, whereby the charges leveled against the petitioner were found proved. It was proved that the teachers were absent from the school for about 3 years and after re-joining the school, they had put his signature by manipulating the teachers attendance register and received a huge amount by preparing bill for the period of absence in collusion with the petitioner, who was the Drawing & Disbursing Officer of the school in question. When the charges leveled against the petitioner were found proved, a second show cause notice was issued to petitioner vide letter No. 1526 dated 05.7.2011, whereby the copy of the report of the enquiry officer was also made available to the petitioner.*

*12. The on receipt of the second show cause from the petitioner, the matter was duly considered in the department and in the second show-cause, it was mentioned by the petitioner that the District Education Officer, Patna vide letter no. 2109, dated 14.09.06 had directed to pay the arrear of salary to the teachers, the payment bill was passed by him after inspection of teachers attendance register, in which the teachers had put their signature. In the second show-cause, the petitioner has also claimed that vide Director, Secondary Education's letter no. 464 and 465 both dated 06.06.06, the teachers in question were exempted from charges and due to*



*this reason the payments were made. However from the scrutiny of the file it appears that there was no any clear-cut instruction for the payment of the salary of the Sri Manoj Kumar and Sri Ram Krishna Prasad Singh from the office of the answering respondent, but even though the instant petitioner had quoted the letter no. 2109, dated. 14.09.06 and has claimed that vide the aforesaid letter, the permission for the payment of arrear of the salary of the two assistant teachers namely, Sri Manoj Kumar and Sri Ram Krishan Prasad Singh were paid. But the fact is something else, which can easily be understood by the bare reading of the letter in question (Annexure of the writ appl.). It is further relevant to mention here that on receipt of the reply of second show-cause of the petitioner, the matter is under verification whether the order of payment of teachers in question was given by the department or not. After due verification of the stand of the petitioner given in second show-cause, the department will take decision in the departmental proceeding in accordance with law.”*

It would thus be very clear that the department has unnecessarily kept the matter pending because the decision in the departmental proceeding has to be taken on the basis of the materials on record and if the petitioner has taken certain defence that must be reflected from the record of the departmental proceeding. No new material cannot be looked into either finding out justification of the defence of the petitioner or the petitioner cannot also now invent any new plea, if the same has not been raised at that point of time in the departmental proceeding.

This Court would accordingly direct the



competent disciplinary authority to ensure that a final order in the departmental proceeding pending against the petitioner must be passed within a period of three months from the date of receipt of this order and whatever due amount becomes payable to the petitioner, if any, on the head of balance of pension and/or gratuity is paid to the petitioner in next one month, if on the other hand nothing more is found to be payable to the petitioner on the head of pension and gratuity on account of the order of punishment that also must be done by the Director, Secondary Education passing a reasoned order within the same period of one month and that order should also be communicated to the petitioner.

With the aforementioned observation and direction, this application is disposed of.

**(Mihir Kumar Jha, J)**

Ranjan/-

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