

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3719 of 2014

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Ramseyak Goswami Son Of Late Shiv Prasan Goshwami R/O Village- Diyan, P.S.
Mohaniya, District Kaimur At Bhabhua

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Rohtas At Sasaram
3. The Regional Deputy Director Of Education, Patna Division, Patna
4. The District Education Officer, Rohtas At Sasaram
5. The District Programme Officer, Establishment Rohtas At Sasaram
6. The Block Development Officer-Cum-Sensus Officer, Shivsagar, Rohtas
7. The Block Education Extension Officer, Shivsagar, Rohtas At Sasaram
8. The Block Education Extension Officer, Nokha (West), District- Rohtas At Sasaram
9. The Block Education Extension Officer, Nauhatta, District- Rohtas At Sasaram
10. The Incharge, Headmaster, Nationalized Middle School, Mohammadpur Circle, Shivsagar, District Rohtas At Sasaram
11. The Area Officer Of Education, Rohtas At Sasaram

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAMADHAR SHEKHAR

For the Respondent/s : Mr. S.A. ALAM

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 22-04-2015

Heard learned counsel for the parties as with regard to the
following prayer made in this application:-

"1(i) For issuance of writ in the nature of certiorari for
quashing of the order dated 01.03.2012 passed by the
Regional Deputy Director of Education in a
departmental appeal whereby though the order of
dismissal of the petitioner has been cancelled but he
has been awarded with a punishment of withholding of

20% of the pension. Further it has also been held that the petitioner will not be entitle for anything except the subsistence allowance during the period of his suspension.

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- (ii) *For issuance of writ in the nature of certiorari for quashing of Memo No. 376 dated 25.01.2002 whereby without proving the charge, without giving any opportunity to the petitioner to participate in the departmental proceeding and even without giving a second show cause notice along with the copy of the inquiry report the petitioner has been dismissed from service.*
- (iii) *For necessary direction to the respondent authorities to pay the factual salary to the petitioner during the period he remained under dismissal as his dismissal was not in accordance with law.*
- (iv) *For necessary direction to the respondent authorities to make payment of full pension along with arrears since the date of his superannuation with panel interest of 18%."*

Pursuant to the earlier order of this Court dated 22.4.2014, a counter affidavit has been filed which would only go to show that the records of the departmental proceeding have been made to disappear. Admittedly, an ex-parte enquiry was conducted against the petitioner.

Learned counsel for the petitioner however has himself admitted that the memo of charge was served on him.

This Court, on perusal of the counter affidavit and specially the enquiry report, as contained in Annexure-A as well as the order of the disciplinary authority, namely, the District Education Establishment Committee, is satisfied that the rule of natural justice was not followed in conducting of ex-parte enquiry. Even if the petitioner after service of memo of charge had not participated in the departmental enquiry, a notice was essentially required to be given to him and if the notice of departmental proceeding could not be served on the petitioner, there had to be a publication in the newspaper with regard to conducting of the ex-parte departmental enquiry. From the enquiry report as well as from the proceedings of the District Education Establishment committee, it does not transpire that effective step was taken for service of notice of the departmental proceeding against the petitioner. The petitioner also cannot be blamed for non-availability of the service record because he had filed the writ application within time in the year 2002 which got disposed of after eight years by this Court by directing the petitioner to file an appeal. In the appellate order, the appellate authority has himself come to a finding that the rule of natural justice was not followed and the petitioner was not given sufficient opportunity. He has also taken



into account that the petitioner was dismissed from service only six days before the scheduled date of retirement. Considering all these aspects, the petitioner's punishment of dismissal from service has been reduced to stoppage of 20% of pension as well as denying him the payment of salary for the period of suspension i.e. 13.3.2001 to 25.1.2002.

This Court having found that the departmental proceeding against the petitioner was not conducted in a proper manner and in fact no reasonable opportunity was given to the petitioner as with regard to departmental proceeding would quash both the orders of punishment of dismissal from service dated 25.1.2002 as also the appellate order dated 20.3.2012 and remit the matter back to the Departmental Enquiry Officer, Rohtas, Sasaram who shall now appoint a new enquiry officer before whom the petitioner will file his written statement of defence as this Court does not find any averments made in the writ application that he had filed written statement of defence after service of memo of charge. Though the petitioner admits that he was served a memo of charge in paragraph no.9 onwards, he has only assailed that no evidence was enclosed with the memo of charge.

Be that as it may, since the petitioner claims by Annexure-4 that he had submitted his written statement of defence, if

the petitioner does not want to file any fresh written statement of defence, the said document contained in Annexure-4 will be treated to be written statement of defence whereafter the enquiry officer shall proceed and conclude the departmental proceeding within a period of four months from the date of receipt of this order and, after the enquiry is conducted, the copy of the enquiry report shall be furnished to the petitioner whereafter the competent disciplinary authority shall pass his final order.

As the petitioner has already sanctioned 80% pension, the same shall be continued to be paid till a fresh order is passed by the disciplinary authority.

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

(Mihir Kumar Jha, J)

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