

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11234 of 2014

Rudra Narayan Ram Son of Ram Awtar Ram Resident of Village - Lachhnauta,
P.O. - Laukaria, P.S. - Palanawa, District - Motihari, East Champaran. **Petitioner**

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
4. The District Education Officer, Muzaffarpur.
5. The Accountant General, Bihar, Patna

... **Respondents**

Appearance :

For the Petitioner/s : Mr. Ravi Verma, Advocate

For the Respondent/s : Mr. AMAR NATH DEO, Advocate

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 10-05-2016

The petitioner seeks quashing of the order dated 4.4.2014, passed by the Principal Secretary, Directorate of Primary Education, Department of Education, Bihar (respondent no.1) dismissing him from service.

2. It appears that on 13.5.2010, the petitioner was arrested in a trap case accepting bribe of Rs.3000/- which gave rise to Vigilance case no. 40 of 2010 instituted on 13.5.2010. He was put under suspension vide letter, dated 4.6.2010. Departmental proceeding was also initiated against him on 3.2.2014. One of the charges was framed against him was that he demanded and was caught while accepting a sum of Rs.3000/-. At the time of framing of charge, the petitioner was in judicial custody. He came out from the custody on 8.9.2010. Enquiry report was submitted on

15.2.2014. On receipt of the show cause, the Director, Education Department who was the disciplinary authority issued show cause seeking his response on the adverse finding recorded in the enquiry report. The petitioner filed his reply denying the charges. Not being satisfied with the explanation, respondent no.1 passed order of dismissal from service vide Memo no. 507 dated 4.4.2014.

3. IA No. 2660 of 2016 has been filed to include the prayer that all the dues from the date of his suspension since 12.2.2014 till his retirement in May, 2015 be paid with all the retiral dues.

In view of the averments made in the IA, the same is allowed and prayer made therein would form part of the writ petition.

Counter affidavit as well as supplementary counter affidavit has been filed on behalf of the respondents justifying the impugned action taken against the petitioner.

The petitioner has challenged the impugned order primarily on the ground that order of punishment has been passed by respondent no. 1, who would be the appellate authority in a departmental proceeding. From perusal of clause 97 as well as 149 of the Bihar Education Code, it is apparent that the Director, Primary Education, Department of Education, Government of

Bihar, Patna (respondent no.2) would be the appointing and controlling authority. The petitioner as such has been deprived of remedy of appeal.

In this view of the matter, the impugned order of dismissal would not be sustainable in law. As such, the impugned order of punishment, dated 4.4.2014, passed by the Appellate authority (respondent no.1) is set aside. As the petitioner has retired the matter would now proceed under Rule 43B of the Bihar Pension Rules, 1950. As the petitioner has also filed his reply before the disciplinary authority in response to the enquiry report, the departmental proceeding would proceed from the said stage under the Bihar Pension Code.

In the facts and circumstances of the case, this Court is not inclined to pass any order directing the respondents to make payment for the period of dismissal till the date of retirement which matter would be also considered in the proceeding under Rule 43B.

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
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