

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5257 of 2011

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Sri Rajeshwar Prasad, Son of Late Daroga Prasad, resident of Village - Bankatwa, P.O. Choubey Tola, P.S. Chnpatia, District - West Champaran.

.... Petitioner

Versus

1. The State of Bihar.
2. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Saran Division, Saran at Chapra.
4. The District Education Officer, Siwan.

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Sr. Advocate and Mr. Mukesh Kumar Singh, Advocates.

For the Respondents : Mr. G.K. Agrwal, G.A. 10.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

7 05.02.2018 This writ application has been filed by the petitioner for quashing of the order passed by the Director, Primary Education, Government of Bihar, Patna, (respondent no. 2) contained in Memo No. 167 dated 04.02.2011 by which the earlier order of dismissal of the petitioner from service with effect from 16.09.1995, contained in Notification No. 135 dated 16.09.1995, has been upheld, accordingly, the petitioner was again held to be dismissed from service with effect from the same date i.e., 16.09.1995. The petitioner has also sought for direction for his reinstatement in service from the date of his removal.

Learned Senior counsel for the petitioner submitted that



the order under challenge dated 04.02.2011 is in teeth of the order of this Court dated 06.05.2010 passed in C.W.J.C. No. 1703 of 1996.

A counter affidavit has been filed on behalf of the respondent no. 2 contending therein that in terms of the liberty granted vide order dated 06.05.2010 passed by this Court, a proceeding under Rule 43(b) of Bihar Pension Rules was initiated vide Annexure-13 of the writ petition vide Memo No. 892 dated 16.07.2010 and after submission of the enquiry report, second show cause was issued to the petitioner alongwith a copy of the enquiry report. The petitioner submitted his explanation but all the charges against the petitioner were again found to be proved, thus earlier order of dismissal of service of the petitioner was upheld vide Annexure-1. It is also contended that the petitioner has not been dismissed with retrospective effect rather the order of dismissal passed earlier has been upheld in the subsequent proceeding initiated under Rule 43(b) of Bihar Pension Rules.

From the rival contention of the parties, the primary issue which emerges for consideration is: whether the order under challenge issued vide Memo No. 167 dated 04.02.2011 has been passed in terms of the order of this Court dated 06.05.2010 passed in C.W.J.C. No. 1703 of 1996.



I find that while passing the said order dated 06.05.2010, this Court granted liberty to the respondents to proceed afresh against this petitioner and further directed that if the respondents decide to proceed in the matter afresh, in that case, the proceeding must be done and completed within a period of six months from the date of receipt/production of a copy of this order. This Court had also made it clear in the said order dated 06.05.2010, that if the proceeding is not concluded and final orders are not passed by the respondents within six months, in that event respondents shall be precluded from proceeding in the matter afresh and petitioner will be entitled to be restored in service with all consequential benefits.

It appears from Letter dated 20.05.2011 of the petitioner contained in Annexure-12 to the writ petition that the order of this Court dated 06.05.2010 passed in C.W.J.C. No. 1703 of 1996 was brought to the notice of the Director, Primary Education, Bihar, on 20.05.2011, whereupon he issued the order vide Memo No. 892 dated 16.07.2010 (Annexure-13 to the writ petition) regarding initiation of departmental proceeding in terms of Rule 43(b) of Bihar Pension Rules.

In view of the facts discussed above, I am of the view that the order under challenge in the writ petition contained in



Memo No. 167 dated 04.02.2011, has not been passed within the said period of six months stipulated by the order of this Court dated 06.05.2010, which was mandatory for the respondents as in the later part of the same order, necessary consequences in case of failure, was made clear regarding the entitlement of the petitioner for all consequential benefits, therefore, I am of the considered opinion that the order under challenge requires interference, accordingly, Annexure-1 to the writ petition contained in Memo No. 167 dated 04.02.2011 is hereby quashed.

This writ petition is allowed.

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(Sudhir Singh, J)

