

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9920 of 2011

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KAMTA PRASAD LT. RAM HARI SINGH HEMDIA, P.O. NARDIGANJ,
P.S. NARDIGANJ, DISTT. NAWADA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. THE PRINCIPAL SECRETARY, DEPARTMENT OF HUMAN RESOURCE DEVELOPMENT , GOVT. OF BIHAR , BIKAS BHAWAN ,PATNA.
3. THE DIRECTOR, SECONDARY EDUCATION HUMAN RESOURCES DEVELOPMENT DEPARTMENT, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT GOVT. OF BIHAR, PATNA
4. THE DEPUTY DIRECTOR, SECONDARY EDUCATION, HUMAN RESOURCES DEVELOPMENT DEPTT. GOVT. OF BIHAR, PATNA
5. THE DISTRICT EDUCATION OFFICER, ROHTAS

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s : Mr. S.D. Sanjay AAG-12

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

8 18-06-2018 Heard Mr. Brisketu Sharan Pandey, learned counsel
for the petitioner and learned counsel for the State.

The petitioner is aggrieved by the order contained in
Annexure-2 and the appellate order as contained in Annexure-1.

Learned counsel for the petitioner refers to Annexure-
4 to submit that the memo of charge is in fact not a charge of
misconduct but it refers to a finding and as such the entire
proceeding is vitiated on account of error in framing of the
charge i.e. instead of framing charge finding has been
mentioned in the memo of charge. His second submission is that
the petitioner has adduced evidence in support of his case on



forfeiture of salary for the period of suspension but no show cause was issued and as such the order of forfeiture of salary for the period of suspension is unsustainable. He submits that in fact, in the instant case only empty formality has been completed as the departmental proceeding has not been conducted properly in accordance with law against the petitioner. The petitioner has been punished in this case only on the basis of finding in judicial proceeding.

Learned counsel for the respondents submits that the petitioner has been inflicted punishment on the basis of proved charges in judicial proceeding.

On consideration of the rival contention of the parties and on perusal of the documents available on the record, it appears that the respondents have not issued any show cause which is required for forfeiture of the salary for the period of suspension. They have not taken separate decision as to how they have treated the period of suspension of the petitioner after opportunity of hearing.

So far as the forfeiture of 5% pension is concerned, learned counsel submits that it is highly disproportionate and the petitioner has to suffer pecuniary loss every month.

Considering the submission advanced on behalf of the



petitioner, the Court is of the considered view that the respondents have not issued any show cause on the point of forfeiture of salary for the period of suspension, which is essential requirement in a departmental proceeding as no separate action was initiated and no separate decision was taken and only one composite order was passed on the show cause which was issued for the purpose of forfeiture of 5% pension. Such order, in the opinion of the Court, is unsustainable.

The court is of the view that the respondents are required to issue show cause on the point of treatment of the period of suspension whether the salary should be paid for the aforesaid period or not and only after opportunity of hearing, the respondents may pass order on forfeiture of salary for the period of suspension.

Adverting to the issue that the charges were not the charges rather instead of framing charge of misconduct, the Annexure-4 has been issued incorporating finding on the charges and as such the departmental proceeding is only an empty formality and misconduct was not proved rather it was based on the findings at the initial stage, the court in the absence of challenge as to the finding of judicial proceedings, is unable to enter into the controversy whether the petitioner was



proceeded against in accordance with law or not and whether the charges contained in Annexure-4 is vitiated on account of reference of finding in a judicial proceeding. However, considering the fact that the petitioner has superannuated and he has to suffer loss of 5% pension every month, the respondents are hereby directed to reconsider the quantum of punishment considering the hardship discussed hereinabove and take final decision in the light of the principles laid down by the Apex Court in the case of **B.C. Chaturvedi vs Union Of India And Ors.: AIR 1996 SC 484 = (1995) 6 SCC 749** within a period of three months from the date of receipt/production of a copy of this order.

The respondents are required to give opportunity of hearing to the petitioner on the point of forfeiture of salary for the period of suspension and pass order afresh after hearing the petitioner within the time frame indicated hereinabove.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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