

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8389 of 2005

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JAGDISH KUMAR SINHA son of late Babulal Sinha, R/at -56, Anandpuri,
West Boring Canal Road, Patna, P.S. Srikrishnapuri, Distt. Patna.

... .. Petitioner/s

Versus

1. THE BIHAR SCHOOL EXAM. BOARD , Sinha Library Road, Patna
thourgh it Secretary
2. The Chairman, Bihar School Examination Board, Sinha Library Road,
Patna-1
3. The Secretary, Bihar School Examination Board, Sinha Library Road,
Patna-1

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. NIRANJAN KUMAR, Adv.
For the Respondent/s	:	Mr. J.P.SHUKLA, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-03-2018

This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for a direction to the respondent-authorities to consider and pay the stopped stagnation increment and its consequential benefits to the petitioner due from May 2001 onwards and to pay arrears of salary to the petitioner of suspension period from 1.1.2002 to 30.9.2002 with interest and also to pay the honorarium amount of two months for the year 2002 for Annual and Supplementary Matriculation Examination with interest and to quash the Memo no. 2211 dated 17.11.2003 by which order of deduction of 15% amount from pension has been made.



Petitioner was appointed as Assistant on 18.8.1968 in Bihar School examination Board and his services was regularized on 18.10.1970 with effect from 18.8.1968. Petitioner was granted two salary enhancement after completion of two years in service on 1.1.1973 and from 6.4.1973 he started to make contribution in the provident fund. By order dated 16.4.1987 petitioner was granted first time bound promotion with effect from 1.4.1981 and he was granted second time bound promotion by order dated 17.5.1995 with effect from 1.1.1995. Petitioner met an accident on 8.10.1999 in which his both legs got fractured and he remained under treatment till 31.3.2000. Petitioner was posted on 17.10.2000 in the branch situated at third floor of the building. He filed representation that due to fracture in his both legs it is difficult for him to go to third floor and his wife had also died on 30.5.2000 and he may be posted in any branch on the ground floor but the same was not accepted and noting was made that petitioner if unable to perform his duty, he could opt for voluntary retirement.

After bifurcation of State of Bihar into two states petitioner was allocated Jharkhand Madhamik Pariksha Parishad against which he filed a writ petition being C.W.J.C. No. 4533 of 2001



seeking quashing of Memo No. 3026 dated 31.3.2001 and same was allowed and the impugned order was quashed.

The LPA preferred by the respondent-Board was also dismissed on 19.7.2001 and on account of harsh attitude of Respondent-Board all employees went on strike in November 2001 and two FIRs were instituted in Kotwali under different Sections of the Indian Penal Code by Secretary of the Board and on 1.1.2002 fourteen employees including petitioner were suspended and thereafter by Memo dated 22.4.2002 chargesheet was issued to petitioner and others and reply was to be submitted within three weeks and by order dated 22.4.2002 the services of employees including petitioner was handed over to Jharkhand Secondary Examination Board, Ranchi, on permanent basis and they were relieved on 24.4.2002, against which they again moved before the High Court and same was allowed on 5.8.2002. The suspension of petitioner and others were revoked on 1.10.2002 but departmental proceeding continued against them. Petitioner and others thereafter joined on posts but they were not allowed to perform their duty peacefully and petitioner filed an application on 28.10.2002 for his voluntary retirement and he was voluntary retired on 27.11.2002 with effect from 30.11.2002 but



departmental proceeding against him continued. Enquiry Officer was appointed but no enquiry was conducted in his presence.

Petitioner had represented to provide list of witnesses and documents by which charge was to be established but same was never provided to him. The enquiry officer directed petitioner to appear on 23.9.2003 and petitioner was present but no witness was examined, no document was exhibited, no cross-examination was done or any opportunity was provided to petitioner to lead his evidence. No second show cause notice was issued or copy of enquiry report was given to petitioner. Suddenly by impugned order punishment of 15% of deduction of pension was imposed.

The Respondents in their counter affidavit had enclosed enquiry report as Annexure-B which is perfunctory and based on no evidence. The enquiry officer has held charges proved on basis of lodging of FIR against petitioner and since petitioner has been acquitted punishment based on FIR does not survive. FIR is not a substantive piece of evidence and indicates suspicion only which is required to be proved in criminal trial or departmental enquiry. Suspicion cannot take place of proof. Enquiry report has already been quashed in CWJC No. 8629 of 2005 by order dated 24.7.2007 and same is quashed against petitioner also.



One of the employees who was also proceeded along with petitioner and was suspended along with petitioner and others (Annexure-5) and was imposed similar punishment in departmental proceeding namely Punit Bhakra, who filed a writ petition being CWJC No. 8629 of 2005 (Punit Bhakra vs. Chairman, Bihar School Examination Board) which was allowed by Patna High Court by its order dated 24.7.2007 and order of deduction of 15% pension was quashed as contained in Annexure-19. On the basis of said decision passed by High Court office order was issued being 224/02(charge) by which benefit of said order was extended to all similarly placed employees who were also imposed similar punishment there. Order of guilt and punishment were withdrawn and were granted all benefits as prayed by petitioner with retrospective effect although they were not petitioners. Petitioner and other employees were acquitted by the criminal court and charges in criminal case and departmental proceeding were identical.

Petitioner's case is also similarly placed as such he is also entitled to similar benefits as granted to other employees as contained in Annexure-20.

Accordingly, the writ petition is allowed. The order of punishment as contained in Memo No. 2211 dated 17.11.2003 is



quashed and petitioner is entitled for all consequential benefits and same to be granted within three months from the date of production/receipt of a copy of this order.

Writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

