IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20324 of 2014

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Baijnath Singh, Son of Late Shadhu Singh, Retired Headmaster of Public High School, Raniganj, Gaya, Resident of Village - Rajraj Nagar, Near Police Line, P.S. - Aurangabad, District - Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Secondary Education, Department of Education, Govt. of Bihar, Patna
4. The District Education Officer, Gaya
5. The Accountant General, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mrs. Anuradha Singh, SC-14

For the Acctt. General : Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 06-11-2018

Heard Mr. Brisketu Sharan Pandey, learned counsel for the petitioner, learned counsel for the State and Accountant General.

2. Manifold submissions have been advanced by learned counsel for the petitioner in support of his case. However, the relevant point for deciding the present writ application is whether the disciplinary authority while differing with the finding in favour of the petitioner recorded by the enquiry officer can record reason for difference of opinion and the action without recording such reason for difference and providing opportunity to the petitioner with reference to favourable report of the enquiry officer can inflict punishment?

3. The relevant facts for deciding the present writ application lies in a narrow compass:

At the relevant time when the petitioner was headmaster of the school, a cheque of Rs.13 lakh and odd was issued in the name of the headmaster of the school. The petitioner being the headmaster of the school has deposited that cheque in the account of the school, but due to mistake on the part of the Bank, the cheque was deposited in the personal account of the petitioner on 15.11.2008. The petitioner on receiving information of depositing the cheque in his own account, returned the said amount, to be deposited in the account of the school on 26.11.2008. The petitioner superannuated on attaining the age of superannuation on 30.09.2009. After petitioner's superannuation, he was issued charge-sheet for alleged temporary embezzlement of the amount of the school by depositing the same in his personal account. Memo of charge was issued on 17.06.2010. After issuance of memo of charge, the enquiry officer on completion of enquiry submitted his report.

4. The enquiry report as contained in Annexure-6 indicates that the enquiry officer has accepted the explanation of the petitioner and was of the view that the petitioner should be exonerated from the charge. From perusal of Annexure-6, it would be evident that no evidence was adduced by the conducting officer to indicate

irregularity in the expenditure of the amount alleged by the department. It is also evident from the enquiry report that the amount was deposited in the account of the School, but due to mistake of the Bank it was deposited in the personal account of the petitioner. It is also admitted that on 28.05.2012 the interest amount (Rs.4960/-) was deposited in the account of the school (principal amount deposited on 26.11.2008), thereafter the disciplinary authority issued second show-cause notice, but while issuing second show-cause notice he has not assigned reason for differing with the finding recorded by the enquiry officer and the mistake of the petitioner in depositing of the amount in his own account and return of the same with interest was totally ignored by the disciplinary authority while inflicting punishment of forfeiture of pension in purported exercise of power under Section 43(b) of the Bihar Pension Rules. On appeal, the appellate authority has not considered the explanation furnished by the petitioner to indicate his bonafide mistake and there was absolutely no loss occasioned to the school or the department, as the principal amount was deposited within 15 days and the interest was also deposited by the petitioner, which was noted by the enquiry officer in his enquiry report.

5. Considering the fact that the irregularity alleged was committed on account of lack of training of the petitioner for

handling the account and also the mistake committed by the Bank in depositing of the amount instead of school account in the personal account of the petitioner and the totality of the facts situation, the Court is of the considered view that the punishment of stoppage of 15% of pension is disproportionate. Accordingly, Annexures- 1 and 2 are quashed. The respondents are directed to reconsider the quantum of forfeiture of pension afresh taking into consideration the fact that the amount was deposited in his account due to lapse on the part of the Bank, the fact that the petitioner has returned the amount within 15 days and also paid the interest. All the mitigating circumstance is required to be considered while passing order afresh under 43(b) of the Bihar Pension Rules.

6. Fresh decision on consideration of the aforesaid fact must be taken by the respondents within a period of four months from the date of receipt/production of a copy of this order.

7. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2018
Transmission Date	