

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5316 of 2017

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Nagendra Sharma, Son of Late Bhagwat Sharma, resident of village - Berpa,
Police Station Rafiganj, District - Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Director, Primary Education, Government of Bihar, Patna Cum - The Disciplinary Authority
3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur - Cum - The Enquiry Officer
4. The District Programme officer, Establishment, West Champaran, Bettiah - Cum - Presenting Officer
5. The Vigilance, Investigation Bureau, The Government of Bihar, Patna through the Superintendent of Police - Cum - Officer Incharge, Vigilance Police Station, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purusottam Kr. Jha, Adv.
For the Vigilance	:	Mr. Santosh Kr. Pandey, AC to Mr. Ramakant Sharma
For the Respondent/s	:	Smt. Binita Singh-SC28 Mr. Kumar Kamalnayan, AC to SC28

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 09-08-2018

Heard learned counsel for the petitioner and counsel for the State.

In this case, the petitioner is challenging the Memo No. 981 dated 28.10.2016 (Annexure-22) passed by the Director, Primary Education, Government of Bihar, whereby and whereunder, the authorities have forfeited the entire amount of pension and gratuity of the petitioner.



A raid was conducted and the petitioner was found to have taken bribe of Rs. 5,000/- for giving favour to the Complainant. On the basis of raid, a departmental proceeding was initiated, memorandum of charge was issued wherein one of the allegations was of taking bribe and another charge is that he had taken an advance of Rs. 3, 20,805/- but, he has not filed proper receipts of expenses done by him.

Learned counsel for the petitioner submits that it is barred under law as the matter relates to beyond four years from the date of his superannuation and, as such, cannot be subject matter of departmental enquiry and, ultimately, the punishment order has been passed as against him. Learned counsel for the petitioner further submits that lodging of First Information Report is the basis for setting the criminal case in motion, cannot be a substantive piece of evidence for passing the order of punishment against the delinquent but, requires proving of charges by bringing on record the substantive piece of evidence oral and documentary. While conducting enquiry, fair and proper procedure is required to be followed in terms of Rule 17 of the Government Servant (Classification, Control and Appeal) Rule, 2005 by bringing the competent witness to prove the charge leveled against the delinquent but, a plea has been taken by the State that the



petitioner himself did not participate in the proceeding but, the question is that even if the petitioner has opted to remain absent from participating the departmental proceeding, it is the Department has to prove the charge, not the delinquent is required to disprove the charge because it is the primary duty of the prosecution to bring the materials so that Enquiry Officer would be able to arrive to correct finding with regard to alleged misconduct against the employee. That has not been followed which is a grave lacuna in conducting the departmental proceeding and it ultimately affects the order of punishment.

In that view of the matter, the order of punishment contained in 981 dated 28.10.2017 (Annexure-22) is quashed and the matter is remanded back, if so advised, the State may conduct a fair and proper enquiry as provided in Section 43(b) of the Bihar Pension Rule and, if so like, they may pass an order in accordance with law.

Any payment would be made, subject to the outcome of the proceeding but, it is further directed that the entire proceeding should be completed within a period of three months from the date of receipt/production of a copy of this order.

The three months time is subject to cooperation extended by the petitioner and if the petitioner chooses not to



participate in the proceeding, the Enquiry Officer will be at liberty to proceed ex-parte in accordance with law and pass an order accordingly.

However, the State is also directed to release the amount of G.P.F., Insurance and Leave Encasement to the petitioner.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

