

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3956 of 2014

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Mohan Thakur son of Late Sito Thakur Retired Assistant Teacher, Primary School, Jayanti Gram, Karim Tola, P.S.- Birpur, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Treasury Officer, Begusarai
3. The District Education Officer, Begusarai
4. The District Programme Officer Establishment, Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amaresh Kumar Singh
For the Respondent/s : Mr.A.Ujjwal

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 05-07-2019

The present writ petition has been filed for quashing the disciplinary proceedings which have been started against the petitioner herein under Rule 43(b) of the Bihar Pension Rules by framing charges vide Memo No. 375 (Establishment) dated 13.04.2012 issued under the joint signature of the District Education Officer, Begusarai and the District Programme Officer, Begusarai. The petitioner had further prayed for quashing of the Memo dated 23.09.2013 issued by the District Education Officer, Begusarai, whereby and whereunder, in anticipation of the decision to be taken by the District Teachers Establishment Committee, it has been decided to initiate certificate proceedings against the petitioner herein for



recovery of the government money taken by him during his entire service period illegally by remaining in government service in a fraudulent manner on the basis of fake training certificate as also to reject the claim of the petitioner for grant of pension etc.

The brief facts of the case, according to the petitioner herein, is that the petitioner is said to have been appointed by issuance of appointment letter dated 14.04.1980 by the District Superintendent of Education, Begusarai whereafter the petitioner had joined the services and continued to work without any complaint from any quarter. Subsequently, the petitioner was asked to deposit his original certificates in the year 1986 whereupon the petitioner is stated to have submitted the same. Again the petitioner was asked to submit the certificates whereupon the petitioner had submitted the photo copy of the certificates with the District Education Officer, Begusarai. It is the case of the petitioner that subsequently the salary of the petitioner was stopped vide letter dated 17.02.2004 and the one dated 31.03.2004 issued by the District Superintendent of Education on the pretext of verification of the educational qualification/certificates of the petitioner. Subsequently, upon the respondent authorities being satisfied with regard to the



genuineness of the certificates of the petitioner herein had directed for payment of the salary, as is apparent from the letter of District Superintendent of Education, Begusarai dated 16.03.2005, wherein it has been clearly stated that the document submitted by the petitioner has been verified by the Bihar School Examination Board and a report dated 13.10.2004 has been submitted by the said Board. The petitioner is stated to have retired on 31.07.2009 while working on the post of Assistant Teacher, Primary School, Jayanti Gram Karim Tola, P.S. Birpur, District-Begusarai, however, the salary for the month of January, February and May, 2008 had not been paid, hence the petitioner was compelled to file a writ petition bearing CWJC No. 1665 of 2011 and a coordinate Bench of this Court, by an order dated 09.08.2011 had directed the respondent authorities to pay the salary of the petitioner for the period for which no salary has been paid to the petitioner herein. Thereafter, the salary for the aforesaid period was paid to the petitioner on 04.02.2012, however, no retiral benefits were paid to him, compelling the petitioner herein to file another writ petition bearing CWJC No. 4435 of 2012. During the pendency of the said writ petition, the respondent authorities had initiated disciplinary proceeding under Rule 43(b) of the Bihar Pension



Rules vide Memo dated 13.04.2012. The petitioner had then replied to the memo of charges by filing a reply dated 05.10.2012 stating therein that his testimonials had been verified on many occasions including in the year 2004 and only after verification of his testimonials, the payment of salary had been resumed and was being made regularly till his superannuation. It is the contention of the writ petitioner that without either holding any enquiry or without the prosecution (Department) examining any witness or giving any copy of the documents and letters relied upon by the prosecution to the petitioner herein and without getting a report from the Bihar School Examination Board, the enquiry report was submitted on 23.08.2013 and a second show cause notice was issued to the petitioner vide letter dated 24.08.2013. Finally the impugned order dated 23.09.2013 was passed by the District Education Officer, Begusarai whereunder it has been directed to recover the salary paid to the petitioner during his entire service career as also not to make any payment of the retiral dues etc. In such view of the matter the aforesaid writ petition bearing CWJC No. 4435 of 2012 dated 21.10.2013 was disposed off with liberty to the petitioner to challenge the aforesaid order dated 23.09.2013.

The learned counsel for the petitioner has submitted



that the petitioner was appointed in the year 1980 and the disciplinary proceedings under Rule 43(b) of the Bihar Pension Rules were initiated after retirement of the petitioner on 13.04.2012 i.e. after a lapse of about three years. Hence, the said proceedings, initiated under Rule 43(b) of the Bihar Pension Rules, is clearly barred since the allegations pertain to an incident which has taken more than four years back, thus the entire disciplinary proceedings including the impugned orders dated 13.04.2012 and 23.09.2013 are required to be set aside. It is further argued that the enquiry report is perverse and is fit to be set aside. The learned counsel for the petitioner has further submitted that neither any witness has been examined nor any documents have been proved during the course of the enquiry nor the petitioner has been granted any opportunity to put forth his stand, hence the entire disciplinary proceeding is void and has been held in violation of the principles of natural justice, hence is required to be set aside. It is next contended that long back in the year 2004 itself the testimonials/certificates of the petitioner have been verified and only after the Bihar School Examination Board had submitted its verification report in favour of the petitioner, the District Superintendent of Education, Begusarai vide letter dated 16.03.2005 had directed



the Treasury Officer, Begusarai to resume payment of salary of the petitioner herein, thus there is no doubt about the genuineness of the certificate of the petitioner and the entire disciplinary proceedings initiated against the petitioner is a sham and directed against the petitioner with vengeance and bias, hence is required to be set aside, especially in view of the fact that the Enquiry Officer, in his enquiry report dated 23.08.2013 has clearly stated that a situation of ambiguity still prevails with regard to the teachers training certificate of the petitioner herein as well as the entire enquiry report is based on surmises, conjectures and doubt, hence the same is not fit to be relied upon.

The learned counsel for the respondent nos. 3 and 4 referring to the counter affidavit, filed on their behalf, has submitted that upon the petitioner having retired from the post of Assistant Teacher while working in the Government Primary School, Karim Tola under Birpur Block in the District of Begusarai on 31.07.2009, a complaint was received in the office of the District Superintendent of Education, Begusarai regarding seven teachers, including the petitioner herein, being appointed on the basis of fake and forged certificates. Thereafter, the then District Superintendent of Education,



Begusarai vide Memo dated 07.09.2008 had stopped the salary of the said seven teachers including the petitioner herein and had asked them to submit their educational qualification certificate whereafter, upon submission of the same, they were sent for verification to the Bihar School Examination Board, Patna and the report received from the Bihar School Examination Board revealed that certificates of four teachers out of the aforesaid seven teachers were forged, hence the said four teachers were dismissed from their services. As far as the case of the petitioner and one Mohan Saha is concerned, it was found that the certificate which they had produced did not contain roll number and roll code, hence the same was not verified by the Bihar School Examination Board, Patna. A show cause notice was then issued by the District Superintendent of Education, Begusarai and the District Programme Officer, Establishment, Begusarai to the petitioner herein vide Memo dated 15.09.2008 and Memo dated 03.12.2011 with regard to the forging of the certificates. Again a show cause notice was issued to the petitioner herein by the then District Programme Officer, Establishment, Begusarai vide Memo dated 23.01.2012 and the petitioner was requested to submit his educational certificate containing his roll number and roll code and the



petitioner was further informed that in case of his default it would be presumed that the complaint made against the petitioner regarding his certificates being fabricated and forged would be accepted to be true. The petitioner had failed to respond to the aforesaid show cause notices and the respondents were compelled to initiate disciplinary proceedings under Rule 43(b) of the Bihar Pension Rules against the petitioner herein vide order dated 03.02.2012. Thereafter memo of charges in Prapatra-Ka were issued to the petitioner vide Memo dated 13.04.2012 on the allegation of submitting photo copies of certificates bearing no roll code or roll number, as also on the allegation that the petitioner was trying to deliberately obstruct the enquiry procedure by submitting photo copies of certificates not bearing roll code or roll number. It appears that an enquiry was conducted by the Enquiry Officer who had then submitted his enquiry report dated 23.08.2013 wherein the Enquiry Officer has recorded that the teachers training certificate, purportedly to be that of the petitioner herein, as produced by the prosecution has been denied by the petitioner to be the one belonging to him, hence the entire situation pertaining to the teachers training certificate of the petitioner is fluid and a situation of ambiguity is prevailing, more so since the petitioner has failed to produce



either the original or the photo copy of the said certificate on the pretext that his case is pending in the court of law. In such view of the matter, the Enquiry Officer i.e. District Programme Officer, Begusarai by his enquiry report dated 23.08.2013 had opined that the teachers training certificate of the petitioner is doubtful but on account of non-submission of the teachers training certificate/marks sheet by the petitioner, the allegations levelled against the petitioner stands proved. It appears that the disciplinary authority had issued a second show cause notice dated 23.08.2013 to the petitioner herein, to which the petitioner had submitted a reply dated 20.09.2013 stating therein that his case is pending before the Hon'ble Patna High Court and he has already submitted the certificate available with him. The District Education Officer, Begusarai by the impugned order dated 23.09.2013 had then, upon consideration of the entire matter and in anticipation of the orders of the District Teachers Establishment Committee, passed an order directing for initiation of certificate case against the petitioner for the purposes of recovering the government money illegally received by the petitioner by remaining in the government service in a fraudulent manner on the basis of forged and fabricated teachers training certificate as also rejected the claim of the petitioner



for grant of pensionary benefits etc.

The learned counsel for the respondents has submitted that there is no procedural irregularity in conduct of the disciplinary proceedings under Rule 43(b) of the Bihar Pension Rules and only after proper enquiry as also consideration of the enquiry report by the disciplinary authority, the impugned order dated 23.09.2013, inflicting punishment on the petitioner herein, has been passed by the District Education Officer, Begusarai and the said order dated 23.09.2013 has also been confirmed during the meeting of the District Primary Teacher Establishment Committee, held on 22.12.2018. Thus it is prayed by the learned counsel for the respondents that there is no merit in the present writ petition, hence the same is required to be dismissed.

I have heard the learned counsel for the parties and have gone through the materials on record.

Firstly, this Court finds that the enquiry report dated 23.08.2013 is perfunctory inasmuch as the same is not only based on no evidence but also records a finding to the effect that a situation of uncertainty and vagueness is prevailing as also has held the charges levelled against the petitioner to have been proved merely on suspicion, hence the report of the Enquiry



Officer dated 23.08.2013 is fit to be rejected and does not warrant any reliance for the purposes of inflicting punishment upon the petitioner herein. Consequently, the impugned order dated 23.09.2013 passed by the District Education Officer, Begusarai is fit to be set aside inasmuch as the same has been passed, relying upon the aforesaid perfunctory enquiry report dated 23.08.2013.

Secondly, the services of the petitioner was confirmed only after verification of his testimonials, as is apparent from the unrebutted pleadings made in the writ petition to the effect that after the salary of the petitioner was stopped vide letter dated 17.02.2004/31.03.2004, the payment of salary of the petitioner was only resumed after the genuineness of the certificate of the petitioner had been verified as is apparent from the letter of the District Superintendent of Education, Begusarai dated 16.03.2005. Having already verified the testimonials/certificates of the petitioner long before his retirement, the respondent authorities were precluded from re-examining the veracity of the certificates of the petitioner on a mere unsubstantiated complaint made regarding the genuineness of the certificates of the petitioner, after his retirement. In such view of the matter, on this ground as well the entire disciplinary



proceedings against the petitioner, initiated vide Memo No. 375(Establishment) dated 13.04.2012 issued under the joint signature of the District Education Officer, Begusarai and the District Programme Officer, Begusarai as also the consequential order passed thereto i.e. Memo dated 23.09.2013 is fit to be set aside.

Thirdly, it is clear from a bare perusal of Rule 43(b) of the Bihar Pension Rules, 1950 as to what kinds of punishments can be awarded, as is apparent from a bare reading of Rule 43(b) of the Bihar Pension Rules, which is reproduced herein below:-

“The State Government further reserves to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.....”

In this regard it would be useful to refer to a judgment rendered by a coordinate Bench of this Court, as reported in



(2010) 3 PLJR 4 (Sri Bindeshwari Prasad Singh vs. The State of Bihar & Ors.); paragraph nos. 3 and 4 whereof are reproduced herein below:-

“3. A counter affidavit has been filed wherein the respondents have enclosed an order of punishment dated 22.05.2008 in terms of Rule 43(b) of the Bihar Pension Rules. The order which has been passed against the petitioner after his retirement to the extent that the petitioner will not be entitled for payment of any further amount/allowances for the period of suspension i.e. 18.9.1985 to 30.9.1994, the date of retirement cannot be sustained, inasmuch as, under the scope of Rule 43(b) only punishment that can be inflicted i.e. either withholding of any fixed percentage or full of the pension or recovery of loss of amount caused to the Government exchequer.

4. In that view of the matter, this Court would find that the order dated 22.05.2008 is patently illegal and thus unsustainable in the eye of law. On the basis of such order, the petitioner’s entitlement towards the salary and other emoluments cannot be withheld.”

It would also be relevant to refer to a judgment reported in ***2007(3) PLJR 839 (Sant Prasad Singh vs. The State of Bihar & Ors.)***; paragraph nos. 5, 6 & 7 whereof are reproduced herein below:-

“5. It is also evident from a bare perusal of the impugned order that no reason whatsoever has been assigned as



to how the five charges were proved against the petitioner. The impugned order merely recites that in view of the charges framed against the petitioner, explanation furnished by him and finding recorded by the enquiry officer as also second show cause notice issued to the petitioner and its reply submitted by him, the departmental proceeding was being concluded by passing the order of punishment of both stopping pension 25% forever as well as denying him payment of salary, beyond subsistence allowance, for the period of suspension. Such an order on the face of it cannot be sustained as the disciplinary authority had not applied his mind and had gone to record a finding that petitioner was guilty of the all charges framed against him even without discussing much less applying himself to the pleas of defence raised by the petitioner in the second show cause reply. In such a situation, the impugned order, as contained in Annexure-10 dated 29.10.2001, is held to be in violation of the principles of natural justice and is hereby quashed in the light of the judgment of the Apex Court in the case of S.N. Mukherjee vs. Union of India reported in A.I.R. 1990 SC 1984.

6. It may be further noted that even that part of the impugned order inflicting punishment of no payment of salary to the petitioner for the period of his suspension, beyond subsistence allowance, cannot be sustained because after his retirement from active service



any punishment in a pending departmental proceeding in terms of Rule 55 Civil Services (Classification, Control and Appeal) Rules cannot be passed and such punishment must be confined to the provisions of Bihar Pension Rules. The State Government thus could have only passed an order of punishment in withholding payment of pension/recovery of the amount of loss sustained by the Government. This view that I have taken is also supported by the decision of this Court reported in a judgment (Bindeshwar Narain Srivastava @ Dr. Bindeshwar Narain Srivastava vs. The State of Bihar & Ors.) of 2005 (2) PLJR 114.

7. In that view of the matter, the Respondent authorities will be under obligation to pay the full salary of the petitioner for the period from 24.9.1998 to 5.7.1999 after deducting the amount of subsistence allowance already paid to him.”

From a bare reading of Rule 43(b) of the Bihar Pension Rules, 1950 as also considering the law laid down by this Hon'ble Court, in the aforesaid judgments referred to herein above in the preceding paragraphs, this Court finds that the punishments inflicted upon the petitioner by the impugned judgment dated 23.09.2013 regarding recovery of the salary pertaining to his entire service period and rejection of the claim of the petitioner for pensionary benefits, do not fall within the ambit of the punishment which can be awarded under Rule



43(b) of the Bihar Pension Rules, 1950, hence on this ground as well the impugned order dated 23.09.2013 is liable to be set aside and is accordingly quashed.

Last but not the least, the impugned order dated 23.09.2013 issued by the District Education Officer, Begusarai having been passed in anticipation of decision to be taken by the District Primary Education Establishment Committee and the said Committee having approved the order of the District Education Officer dated 23.09.2013 by one line unreasoned order despite recording the fact that there is no justification of conducting a proceeding under Rule 43(b) of the Bihar Pension Rules inasmuch as the prescribed period of limitation has expired, as recorded in the minutes of the proceedings held on 22.12.2018, also necessitates quashing of, not only the impugned order dated 23.09.2013 passed by the District Education Officer, Begusarai but also the aforesaid decision taken by the District Primary Education Establishment Committee in its meeting dated 22.12.2018, hence the same are quashed accordingly.

Having considered the facts and circumstances of the case and for the reasons mentioned herein above, the writ petition stands allowed and the impugned order contained in



Memo No. 375 dated 13.04.2012 issued under the joint signature of the District Education Officer, Begusarai and the District Programme Officer, Begusarai, the order dated 23.09.2013 passed by the District Education Officer, Begusarai as also the aforesaid decision of the District Primary Education Establishment Committee taken in its meeting held on 22.12.2018, are set aside, however, without any order as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	17.05.2019
Uploading Date	05.07.2019
Transmission Date	

