

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10884 of 2016

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Ram Krishna Prasad Singh, Son of Late Jamadar Singh, Resident of Mohalla-Bijay Bihar Colony on Dhalai Road, West of R.P.S. Law College, P.S.-Danapur, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna
2. The Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna
3. The Director, Secondary Education, Department of Education, Government of Bihar, Secondary Education
4. The Deputy Director, Secondary Education, Department of Education, Government of Bihar, Secondary E
5. The District Education Officer, Patna
6. The Regional Deputy Director of Education, Patna Division, Patna
7. The Headmaster, Marwari High School, Patna City, P.S.-City Chowk, District-patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yugal Kishore, Sr. Advocate Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Gajendra Prasad Yadav, SC-19 Mr. Jainendra Kr. Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 16-10-2019 Heard learned counsel for the petitioner and the respondents.

2. The petitioner is aggrieved by the order contained in Annexure-14 passed by the Director, Secondary Education, Bihar, Patna dated 04.12.2012 in a proceeding under 43(b) of the Bihar Pension Rules whereby 25% of the pension was forfeited and the subsequent order of the Appellate Authority, contained in Annexure-16, dated 28.01.2015 whereby the



Principal Secretary, Education Department, Bihar, Patna has dismissed the appeal and uphold the order inflicting punishment of forfeiture of 25% of the pension of the petitioner under 43(b) of the Bihar Pension Rules.

3. On 27.07.2007, the petitioner was issued memo of charge just before the date of his superannuation on 31.07.2007. The petitioner submitted his reply to the charges on 21.11.2007, after his superannuation. The respondent decided to convert the pending departmental proceeding as a proceeding under 43(b) of the Bihar Pension Rules in view of the fact that the petitioner has attained the age of superannuation.

4. On 31.03.2011, the petitioner represented the Director, Secondary Education for change of the enquiry officer, as he was apprehending that he may not get justice from the enquiry officer. In the meanwhile, the enquiry officer submitted his enquiry report. Since the petitioner was insisting in change of enquiry officer, he did not participate in the enquiry proceeding.

5. On receipt of the enquiry report, the petitioner was issued second show-cause notice. On receipt of second show-cause notice, the petitioner submitted his reply on 21.02.2012. Thereafter on 04.12.2012, the Director, Secondary Education,



Bihar, Patna issued order inflicting punishment of forfeiture of 25% of the pension in exercise of power under Rule 43(b) of the Bihar Pension Rules. Thereafter the petitioner filed C.W.J.C. No. 2442 of 2013. The writ petition was disposed of with liberty to the petitioner to prefer appeal before the Principal Secretary of the Education Department. Thereafter the petitioner filed appeal before the Principal Secretary. In the meanwhile, Certificate proceeding was also initiated against the petitioner. However, that proceeding was subsequently quashed vide order dated 18.07.2016 in C.W.J.C. No. 2886 of 2015.

6. Mr. Yugal Kishore, learned senior counsel for the petitioner submits that in a situation where the petitioner was demanding change of enquiry officer, he was denied fair opportunity to participate in the departmental proceeding and as such the enquiry conducted against this petitioner is vitiated. Based on such enquiry report, the disciplinary authority has passed order of forfeiture of 25% pension, which was upheld by the Appellate Authority and as such the order inflicting punishment of forfeiture of 25% pension by the disciplinary authority and order upholding the punishment suffers from the same vice of unreasonableness and lack of fair opportunity of hearing in the pending proceeding under Rule 43(B) of the



Bihar Pension Rules.

7. Per contra, learned counsel appearing on behalf of the respondents submits that the enquiry officer was left with no option but to proceed in the matter, as there was total non-cooperation by the petitioner. He submits that if there is no cooperation on the part of the delinquent employee, the enquiry officer has not committed any error in submitting ex-parte report.

8. It is true that ex-parte departmental proceeding is permissible, if there is no cooperation in the departmental proceeding by the delinquent employee, but the ex-parte enquiry report is supported by the reason and materials. The charges have to be proved on the standard of preponderance of probability.

9. The enquiry report contained in Annexure-12 on the face of it indicate that the enquiry was not a fact finding supported by materials and reason. Based on such report, the order inflicting punishment was passed by the Director, Secondary Education and the same was affirmed by the Appellate Authority and as such the Court finds that there is procedural infirmity in conduct of departmental proceeding.

10. Mr. Yugal Kishore, learned senior counsel for the



petitioner has placed reliance on the judgment of the Division bench of this Court dated 11.09.2017 passed in L.P.A. No. 687 of 2019 to contend that in a similar situation, the Division Bench of this Court (to which I was also a member) has taken note of the judgment of the Apex Court in the case of **S. K. Sharma Versus State Bank of Patiala**, reported in **AIR 1996 SC 1699**, and Rule 17 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and held out that the proceeding was vitiated.

11. As noticed above, the Court finds infirmity in the enquiry report and as such the matter requires reconsideration from the stage of enquiry in the light of judgment of the Apex Court in the case of **Managing Director, ECIL vs B. Karunakar**, reported in **(1993) 4 SCC 727**.

12. Accordingly, the enquiry report as well as order of disciplinary authority and the Appellate Authority, as contained in Annexures-12, 14 and 16 are quashed. The matter is remitted back to the respondents to undertake fresh enquiry and pass appropriate order in accordance with law with opportunity to the petitioner. The petitioner is required to extend full co-operation in the Denovo enquiry. The consequences of quashing of Annexures- 12, 14 and 16 shall be abide by the final outcome of



the fresh proceeding.

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

(Anil Kumar Upadhyay, J)

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