

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6273 of 2020

Chandramani Prasad Singh Son of Lakhan Prasad Singh, Resident of P.H.C. Gola, Ramgarh, District-Jharkhand, Pin Code-829110 presently residing at C/o Suresh Prasad Singh, Near Tapovan School, Mohalla-Priyadarshi Nagar, Bhagwat Nagar, Kumhrar, P.S.-B.H. Colony, District-Patna, Pin Code-800026.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.
2. Bihar School Examination Board through its Secretary.
3. Secretary, Bihar School Examination Board.
4. Chairman, Bihar School Examination Board.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Abhinav Srivastava
For the Respondent/s	:	Ms.Binita Singh (Sc28)
		Mr. Vivek Anand Amritesh, AC to SC-28

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 14-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

“(i) Issuance of a direction, order or writ, including writ in the nature of certiorari quashing the office order dated 17/02/2020 bearing memo no. 429/2020 passed by the concerned authorities under the Bihar School Examination Board, Patna (hereinafter referred to as the “Board”), by which in terms of the provisions contained under Clause-VIII of Regulation-50 under Chapter-10 of the Bihar school Examination Board Regulations, 1964, the punishment of



dismissal from service has been inflicted upon the petitioner;

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Board to reinstate the petitioner in the capacity of Assistant, in the services of the Board, along with all the consequential benefits;

(iii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Board to extend all the consequential benefits in terms of arrears of salary, continuity of service, etc. that the petitioner has been deprived of on account of passing of the impugned office order dated 17.02.2020 inflicting the punishment of dismissal from service upon the petitioner;

(iv) Any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.”

3. Petitioner has statutory remedy of appeal before the appellate authority. Without exhausting the statutory remedy of appeal, petitioner has not made out a case. Thus, the present petition is pre-mature in the light of Apex Court's decision rendered in the case of *Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at para 20 held as under:



“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors.”

4. One of the principle laid down in the aforesaid decision is that before entertaining writ petition whether petitioner has exhausted the remedy of appeal or not?

5. In the light of these facts and circumstances and the fact that the petitioner has not availed the remedy of appeal, the instant petition stands disposed of reserving liberty to the



petitioner to prefer appeal against the order dated 17.02.2020 within a period of eight weeks from the date of receipt of this order. The appellate authority is hereby directed to take note of Section 14 of the Limitation Act for the purpose of entertaining belated memorandum of appeal to be submitted by the petitioner.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	

