

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15793 of 2021

Karuna Kumari, aged about 62 years, Wife of Binod Prasad Poddar Resident of Khalifabagh Chauk, Chamra Godown, Budhnath Road, P.S.- Kotwali, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Patna.
2. The Director Primary Education, Patna.
3. The Regional Deputy Director Education Bhagalpur Division, Bhagalpur.
4. The District Education Officer Banka.
5. The District Programme Officer Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Adv Mr. Ayush Kumar, Adv
For the Respondent/s	:	Mr. Subhash Chandra Mishra, SC-16

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 22-09-2022

Heard learned counsel for the petitioner and
learned State counsel.

2. The case has a chequered history which starts from issuance of charge-memo on ०८.०३.२०१३ which is dated 08.03.2013 alleging that the petitioner has solicited and taken Rs. 15,000/- bribe for settling a claim of one complainant regarding his arrears, difference of salary. Allegations relate to a time when the petitioner was Block Education Officer at Katoria in the District of Banka. The charge-memo is based on the petitioner's arrest allegedly caught red-handed while accepting Rs. 15,000/-



bribe leading to institution of Vigilance P.S. Case No. 63/2012.

These facts are not in dispute.

3. The proceedings instituted against the petitioner culminated in dismissal of his service under order dated 25.03.2014 which was assailed by the petitioner in CWJC No. 6499 of 2016. The Court found that relying upon the documents forming part of the criminal investigation, petitioner had been dismissed. The dismissal was thus found to be unsustainable and quashed, leaving it open to the authority to proceed afresh against the petitioner.

4. The petitioner has also approached this Court by filing CWJC No. 560 of 2019, since no decision was taken after petitioner's reinstatement pursuant to order passed in CWJC No. 6499 of 2016, as required under Rule 97 of the Bihar Service Code. The second writ petition was disposed of again allowing liberty to the respondent-authorities to take a final decision on the treatment of period of superannuation and other entitlements under Rule 97 of the Bihar Service Code.

5. Thereafter, the petitioner has been visited with an order dated 27.04.2020 issued by the Director (Primary Education). By the said order, petitioner's full pension has been withheld in purported exercise of power under Rule 43(a) of the



Bihar Pension Rules. Perusal of the order shows that after the matter was decided in CWJC No. 6499 of 2016, the Regional Deputy Director Education was appointed as the conducting officer and he has examined two witnesses. Whereafter the petitioner has been allowed to make comments thereupon and considering the petitioner's comment and records, a decision has been taken to withhold 100 percent pension of the petitioner.

6. The procedure recorded under the impugned order is disputed by the petitioner. It is her specific case that no copy of inquiry report or second show-cause was issued and directly the order dated 27.04.2020 was issued by the Director (Primary Education).

7. This specific assertion in the writ petition has not been denied or disputed by the respondents in the counter-affidavit.

8. The learned State counsel, however, submits that if the records are called for this fact can be ascertained.

9. This Court is not inclined to call for the records for two reasons: (1) The respondents have already been allowed an opportunity to file a counter-affidavit. They have chosen not to deny or dispute the specific assertion of the petitioner made in paragraph 25 of the writ petition. (2) Even if the procedure



recorded in the impugned order dated 27.04.2020 is accepted to have been adopted by the authorities, the procedure is alien to the prescription as contained in the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (for short 'CCA Rules'). From the impugned order dated 27.04.2020 as well as paragraph-8 (X) of the counter affidavit it is evident that after examining witnesses the enquiry officer vide order dated 13.01.2020 has submitted a मंतव्य प्रतिवेदन (opinion report). This opinion report has been relied upon by the Disciplinary Authority in the impugned order of punishment dated 27.04.2020. The proceedings are stated to have been conducted under the CCA Rules, which does not permit such recording of statement of witness behind the back of the delinquent and forwarding of an opinion report, as has been done in the instant case. Such a proceeding is in violation of the procedural requirement of examining the witness on a fixed date in the proceedings and thereafter allowing the government servant to cross-examine the witnesses, as contained in Rule 17(14) of the CCA Rules, 2005.

10. The impugned order of punishment suffers from a major procedural infirmity striking at the root of fairness in the decision making process. The order dated 27.04.2020, on this



ground alone, is fit to be set aside and is hereby quashed. The petitioner, as a result, will be entitled to all consequential benefits, which shall be paid to the petitioner within eight weeks from the date of receipt/production of a copy of this order.

11. Writ application stands allowed.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.10.2022
Transmission Date	NA

