IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2983 of 2007

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Sayed Mokhatar Ahshan, Son of late Sayed Majid Hussain, resident of At and P.O. Gulzarbag, P.S. Alamganj, District – Patna, retired Assistant, Bihar School Examination Boar, Patna

... ... Petitioner/s

Versus

(1) The State Of Bihar through the Director Secondary Education, Bihar, Patna.
(2) The Bihar School Examination Board, Sinha Library Road, Patna, through its Secretary.
(3) The Chairman, Bihar School Examination Board, Sinha Library Road, Patna.
(4) The Secretary, Bihar School Examination Board, Sinha Library Road, Patna.
(5) The Assistant Secretary – cum- Enquiry Officer, Bihar School Examination Board, Sinha Library Road, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Advocate
For the Respondent/s	:	Mr. Ajit Pratap Singh, Advocate
		Mr. Prahlad Kumar Bhagat, GP 13
		Mr. JP Shukla, Advocate
		Mr. Ajit Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT
Date : 21-09-2022

Heard learned counsels for the parties.

2. On 05.09.2022 following order was passed:

> "Heard learned counsels for the parties.
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> The petitioner was an employee of the Bihar School Examination Board. He was placed under suspension on 20.02.2001. Thereafter, he was charge-sheeted in a departmental inquiry. Departmental inquiry was concluded in imposition of penalty of compulsory retirement on 31.10.2001. This Court quashed the order of compulsory retirement in

C.W.J.C. No. 2095 of 2002 on 22.06.2006 while reserving liberty to the respondent-Board to proceed from the defective stage of inquiry. Thereafter certain development has taken place. However, without resorting to logical conclusion in the inquiry, on 13.06.2007 suspension period has been treated as suspension only from 20.02.2001 to 31.10.2001 and restricted payment of subsistence allowance and also ordered that the aforesaid intervening period will not be treated as a duty in service.

Perusal of records, it is evident that on remand to the disciplinary authority to commence inquiry from the defective stage, the disciplinary authority/competent authority has not passed any penalty order under Rule 43 (2) of Bihar Pension Rules for the reasons that as on 13.06.2007 in the normal course, the petitioner has attained age of superannuation and retired from service in the month of November, 2001. Once there is no penalty under Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 or Pension Rules, the suspension period is required to be regulated as duty for all purpose. The disciplinary authority cannot treat the suspension period as suspension only as a major of penalty. On this point second respondent – Board, Secretary is hereby directed to file an affidavit whether suspension is one of the punishment under the Bihar Pension Rules or Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 /Disciplinary Rules governed by the employees of the Board and such affidavit be filed before the next date of hearing.

Re-list this matter on 19.09.2022. It is made clear that no further time would be granted for the reasons that matter is pending consideration from the year 2007."

3. Today learned counsel for the respondents filed supplementary counter affidavit in which official respondents have admitted that final order has not been passed in a disciplinary proceedings pursuant to the initiation of inquiry. On the other hand, suspension period has been treated as suspension while restricting subsistence allowance. In the light of the aforesaid facts and circumstances, the petitioner has made out a *prima facie* case so as to interfere with the impugned orders dated 8.2.2007 and 15.2.2007.

4. Accordingly, orders dated 8.2.2007 and 15.2.2007 stand set aside. The concerned respondent is hereby directed to calculate arrears of salary during the suspension period and disburse the same within a period of three months from the date receipt of this order failing which, the petitioner is entitled to interest @ 8 % *per annum* on arrears of salary.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	23.09.2022
Transmission Date	