

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3731 of 2018

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Kumari Bindhvasini D/o Sri Jagdish Pandit, Resident of Village- Baidhi Sada,
Sharma Chowk, P.O.- Simari Bhakhtiyarpur, P.S.- Bhakhtiyarpur, District-
Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Saharsa, District- Saharsa.
5. The District Education Officer, Saharsa, District- Saharsa.
6. The District Programme Officer Establishment, District- Saharsa.
7. The Block Education Officer, Banma Itahri, District- Saharsa.
8. The Mukhiya Gram Panchayat, Itahari, Block Banma Itahri, District-
Saharsa.
9. The Panchayat Secretary-Cum- Panchayat Teacher Employment Committee,
Gram Panchayat, Itahari, Block
10. Sri Ravindra Kumar Singh, Panchayat Secretary-Cum- Panchayat Teacher
Employment.
11. Sri Anil Kumar, S/o Sri Ram Narayan Yadav, Vill P.O. Itahari, Salkhua,
District- Saharsa.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3902 of 2018

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Nityanand Prasad Rana Son of Sri Jagdish Pandit Resident of Village - Baidhi
Sada, Sharma Chowk, P.O. - Simari Bakhtiyarpur, P.S. - Bakhtiyarpur, District
- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Saharsa, Dist - Saharsa.
5. The District Education Officer, Saharsa, District - Saharsa.
6. The District Programme Officer, Establishment, District Saharsa.
7. The Block Education Officer, Banma Itarhi, District - Saharsa.
8. The Mukhiya Gram Panchayat, Itahari, Block - Banma Itarhi, District -



Saharsa.

9. The Panchayat Secretary-cum-Panchayat Teacher Employment Committee, Gram Panchayat, Itahari, Block
10. Sri Ravindra Kumar Singh, Panchayat Secretary-cum-Panchayat Teacher Employment Committee, Gram Panc
11. Sri Anil Kumar S/o Sri Ram Narayan Yadav Vill P.O. - Itahari, Salkhua, Dist - Saharsa.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 3731 of 2018)

For the Petitioner/s : Mr. Shree Kant Pandey, Adv.

For the State : Smt. Binita Singh -SC 28

Mr. Nishant Kumar Jha, AC to SC 28

(In Civil Writ Jurisdiction Case No. 3902 of 2018)

For the Petitioner/s : Mr. Shree Kant Pandey, Adv.

For the State : Smt. Binita Singh -SC 28

Mr. Nishant Kumar Jha, AC to SC 28

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

- 4 14-11-2022 1. The petitioner in both the writ petitions are commonly aggrieved of the action of the respondent dismissing them from service. While petitioner in **C.W.J.C. No. 3902/2018**, is a Headmaster. The petitioner in **C.W.J.C. No. 3731/2018** is a Teacher who was appointed in the year 2007 under the Rules of 2006. They have been performing their duties. A show-cause notice was issued to them on not joining the place of posting as they were transferred vide order dated 16.01.2016 to Primary School, Makhdumpur from Navsrijit Primary School, Ithari North. It is their case that the petitioners continued to perform their duties and the order was passed contrary to the provisions of the **Bihar Panchayat Primary**



Teachers (Employment) and Service Condition Rules 2012

and respondent no. 10 was a Panchayat Secretary, who had already been put under suspension. Be that as it may, it appears that the petitioners attendance was not accepted and they were allegedly marking their attendance in a separate register. On the basis of a show-cause notice, the respondents have proceeded to dismiss them from service vide order dated 27.01.2018.

2. Learned counsel for the petitioner submits that the original sub-section of **Rule 15** of the **Bihar Panchayat Elementary Education (Employment) and Service Condition Rules 2012** provide under Regulations 15 (G) that an employer would be issued a show-cause notice on the allegations leveled against him by the Secretary of the Employment Unit. After receiving the reply, departmental enquiry shall be conducted and thereafter punishments may be awarded as provided therein.

3. Learned counsel for the petitioner submits that although show-cause notice was given to the petitioner and they submitted their detailed reply including the allegations against them, no further enquiry was conducted and directly an order was passed of terminating them from service.

4. Learned counsel submits that the action of the respondents is unjustified and illegal. The petitioners ought to



have been given an opportunity to defend and submit evidence of their working and performing their duties.

5. Learned counsel relies on judgements passed in case of **Ritu Kumari Vs. State of Bihar 2016 (4) PLJR 788** in support of his continuation.

6. Per contra, learned counsel appearing for the State for respondent no. 6 submits that at the level of the respondent no. 6 an enquiry was conducted and the petitioner did not participate whereafter a report was submitted and directions was issued to the Employment Unit to take action. On the said basis the action had been taken.

7. Learned counsel submits that as the petitioners have been continuously absent from duty, no other option was available with the respondents but to terminate their services.

8. Question whether the petitioners were absent from duty and, therefore, they have committed a misconduct is required to be examined by an independent enquiry wherein the petitioners would be given an opportunity to defend their case and also cross-examine the prosecution witnesses. While procedure may not have been laid down under the **Rules of 2012**, apparently the **Bihar C.C.A. Rules** lay down a guideline how a disciplinary enquiry is to be conducted in terms of **Rule**



17 of the **Rules of 2005**. An enquiry officer is required to be appointed and memo of charges are required to be laid down and the concerned delinquent would be given an opportunity to put-up his defense. The prosecution has to put-up its witnesses in support of the charges and delinquent would be given an opportunity to cross-examine it. Thereafter, the Enquiry Officer shall submit his enquiry report based on the evidence which has been collected during enquiry.

9. The aforesaid procedure is minimal which is expected from State and its authorities before taking any Penal action. Principles of natural justice and fair play demand the aforesaid especially when the same is embibed in the **Rules of 2012** also.

10. In **Ritu Kumari**(supra) the Divison Bench has observed as under Para 9 & 10 -

“ 9. We have heard learned counsel for the parties and find the arguments, raised by the learned counsel for the appellant, is meritorious 2006 Rules are not applicable in respect of the appellant as she abstained from duty after commencement of the 2012 Rules on 17.08.2012. She submitted her joining report on 09.07.2013 Rule 15(g) of 2012 Rules contemplates that in case of habitual absence from duty, explanation would be asked and thereafter a disciplinary proceeding would be started. The appointment of the appellant is governed by the Rules, which contemplates the age of superannuation as 60 years. In case of absence, the Rules contemplate disciplinary action. Therefore, even if the appellant abstained from duty



for almost one year; the only consequence is for initiation of a disciplinary proceeding for her absence. However, once she has submitted joining report, there cannot be any refusal for acceptance of her joining as the respondent could initiate disciplinary proceeding for her absence.

10. Consequently, the order passed by the learned Single Bench is set aside. The joining of the petitioner is ordered to be accepted. However, it shall be subject to the condition of taking of an appropriate decision by the respondents within a period of six months from today as to whether they would like to initiate a disciplinary proceeding against the appellant for her absence. If it is decided to take disciplinary action, then the payment of wages from 09.07.2013 till the date of her actual joining, will be subject to the result of disciplinary proceeding. But if it is decided not to initiate disciplinary proceeding, the appellant will be entitled to wages from the date, she submitted her joining i.e. 09.07.2013. The appellant shall be entitled to current salary from the date she submits her joining again.”

11. Keeping in view above, and satisfied that the said action has not been taken by the respondents. The order of dismissal from service cannot be sustained.

12. Similarly, in **C.W.J.C. No. 3902/2018** on the said reasons as above, impugned order dated 27.01.2018 is set aside without consequential benefits and continuity of service.

13. As the departmental enquiries was not conducted the respondents shall be free to take disciplinary action, if they so choose. However, if such a decision is made the same shall be conducted in terms of observations made herein above. The



petitioner would be entitled to fixation of their wages notionally.
Actual salary is to be paid only if no departmental enquiry is
conducted.

14. Accordingly, the writ petition is allowed
impugned order dated 27.01.2018 in **C.W.J.C. No. 3731/2018** is
quashed and set aside with the consequential benefit of the State
and continuity of service and notional pay fixation.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 91

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