

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14636 of 2022

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Ashok Kumar Singh son of Ram Nagina Singh, Retired Teacher Shri Durga High School, Govindpur Pirpaiti, Bhagalpur, Permanent resident of Pirpaiti Bazar, Village-Manikpur, P.O. and P.S.-Pirpaiti, District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Director, Department of Secondary Education, Bihar, Patna.
3. The Regional Deputy Director, Education-cum-Nodal Officer, Retiral Benefits, Bhagalpur Commissioner, Bhagalpur.
4. The District Education Officer, Bhagalpur, District-Bhagalpur.
5. The District Programme Officer, Education Department, Bhagalpur.
6. The Head Master/Incharge, High School Ramnagar, Govindpur, Pirpaiti, Bhagalpur.
7. The Head Master/Incharge, S.M.S. Girls School, Mirjanhat, Bhagalpur-cum-Drawing and Disbursing Officer.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Singh, Adv.
For the State	:	Mr. Subhash Chandra Mishra (Sc16), Mr. Madhukar Mishra, AC to SC-16, Mr. Pawan Kumar Chaudhary, Adv.
For the Accountant General, Bihar	:	Mr. Binod Kumar Labh, S.C(I.A. & A.D.)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 05-05-2023



Heard Mr. Anand Kumar Singh, learned counsel appearing on behalf of the petitioner, Mr. Subhash Chandra Mishra, Mr. Madhukar Mishra, and Mr. Pawan Kumar Chaudhary, learned counsel appearing on behalf of the State and Mr. Binod Kumar Labh, learned counsel appearing on behalf of the Accountant General, Bihar.

2. The petitioner has filed the present writ petition for the following relief(s) :-

1. (i) For quashing of part of the order dated 13.09.2018 contained in memo no.2057 issued by the Respondent no.5, by which he has directed to the Senior Treasury Officer, Bhagalpur for deduction Rs.8,50,000/- (Rs. eight lakhs fifty thousand) from the Gratuity amount of the petitioner (Annexure-7).

(ii) For directing and commanding the respondents concerned to make arrear of payment as per the seventh pay commission.

(iii) For direction and commanding the respondents concerned to grant the benefit of third M.A.C.P. to the petitioner.

(iv) For direction and commanding the Respondent concerned to pay all the post retiral and consequential benefits for which petitioner is entitled as per the law established with Bank interest.”



3. The petitioner retired from the post of In-charge Headmaster from Shri Durga High School, Govindpur Pirpaiti, Bhagalpur on 31.01.2018. As a consequence of his retirement, the Accountant General, Patna, Bihar vide a letter no. 05/PEN131217057655/ 201711052407PO, dated 27.12.2017, issued P.P.O., which was also communicated to the Treasury Officer, Bhagalpur.

4. Records reveal that on the date of retirement of the petitioner, the senior most teacher of the School namely Dadan Singh was given charge of the School in presence of the other teachers (Annexure-2), and Dadan Singh received the charge and the documents which were handed over to him on the same date, to which he has put his receiving with signature. The documents which were handed over and received in writing by the In-charge Headmaster namely Dadan Singh on 31.01.2018 in presence of all the teachers and staff of the School are as follows:-

“अनुलग्नक:-

1. सारी संचिकाएं
2. सारा भंडारण पंजी
3. फर्नीचर यथास्थिति उपलब्ध
4. कम्प्यूटर रूम सारे कसेंट सहित
5. विद्यालय के खातों के पासबुक चेकबुक सहित
6. सारी चाभियाँ



The petitioner submitted his application for issuance of No Dues Certificate before the new In-charge Headmaster namely Dadan Singh, but the same was not issued to the petitioner immediately. After a lapse of nearly four months of the petitioner's retirement an F.I.R. being Pirpaiti P.S. Case No. 119 of 2018 dated 17.05.2018 was lodged for alleged irregularities and for not handing over the documents as mentioned in the application on 31.01.2018 (Annexure-2 servies) was lodged against the petitioner.

5. The F.I.R. dated 17.05.2018 has been brought on record by way of Annexure-B to the counter affidavit. The allegation relates to the alleged offence which has taken place on 31.01.2018 i.e. the date of retirement that the petitioner had taken away certain records relating to the School on the date of his retirement i.e. 31.01.2018 which was resisted allegedly by the informant. The Director, Secondary Education gave sanction to initiate departmental proceedings vide Memo No. 132, dated 14.01.2019 on the basis of allegation made in the F.I.R. and thereafter the petitioner was served with charge memo in accordance with Bihar C.C.A. Rules, 2005 as contained in Annexure-A to the counter affidavit. Even before the charge memo was issued in Form- K, the District Programme Officer (Establishment) had withheld a total amount of Rs. 8,50,000/ from



the gratuity of the petitioner on 13.09.2018, vide Annexure-6. The petitioner is aggrieved by impugned action taken against him on the basis of the allegation made in the F.I.R. lodged against him.

6. Learned counsel appearing on behalf of the petitioner submits that the F.I.R. has been lodged by the In-charge Headmaster of the School after a delay of nearly four months from the date of retirement of the petitioner. He submits that it would reflect from Annexure-2 series to the writ petition that the petitioner had handed over the charge along with all the relevant papers relating to Register, Stock Register, Furniture Register e.t.c., all the documents relating to Computer Room, Pass Book and Cheque Book and all the Keys of the School, on the date of his retirement. The In-charge Headmaster namely Dadan Singh has given his acknowledgment without any objection and had received all the documents by encircling and putting his signature, on the very date of retirement of petitioner i.e. 31.01.2018.

7. Learned counsel further submitted that the petitioner on the date of his retirement has also applied before the In-charge charge Headmaster for issuing him 'No Dues Certificate' which was not issued to him in spite of the fact of his giving the charge the new In-charge Headmaster taking over the charge had made no objection. The In-charge Headmaster kept his application pending.



It is further submitted that during the entire service period of the petitioner no allegation has been levelled against him. The petitioner has unblemished service. The In-charge Principal, after delay of four months had lodged an F.I.R. dated 17.05.2018 under section 379 of IPC. There is no specific reference of any documents which are alleged to have not been handed over by the petitioner. He submitted that the record reveals otherwise. The F.I.R. has been lodged on 17.05.2018 without there being any material and merely on flimsy ground.

8. Learned counsel for the petitioner further submits that based on the said F.I.R., the District Programme Officer (Establishment) had withheld total gratuity amount of Rs.8,50,000/- vide memo no. 2057, dated 31.09.2018 even without affording him any opportunity to present his case. The petitioner further submits that no notice was given to him by the District Programme Officer regarding the withholding of the gratuity on the ground of alleged offence. The action of the District Programme Officer is without jurisdiction and illegal.

9. Learned counsel further submits that the prosecution sanctioning order contained in Memo No. 132, dated 14.01.2019 under the signature of Director, Secondary Education, Bihar for taking cognizance for offence under Section 379 I.P.C. against the



petitioner is without jurisdiction. He submitted that the sanctioning authority has not taken into account, the fact that the informant, who is the In-charge Principal has already received all the documents on 31.01.2018 and it at all any document was missing or forcibly taken away by the petitioner, then immediate action was required to be taken against the petitioner on 31.01.2018 in front of all the staff and teachers of the School who were present at the time of handing over and taking over the charge .

10. Learned counsel further submits that on the other hand the petitioner has been served with charge memo contained in Memo No. 2351, dated 06.11.2019 under the signature of Director, Secondary Education. From perusal of the charge memo after delay of more than one year, it appears from the perusal of charge memo that no evidence has been adduced nor any witness name has been given which vitiates it in the eye of law being not in accordance with Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Learned counsel submits that the action of the District Programme Officer to withhold entire amount of gratuity in absence of any order of penalty is not in accordance with law. The gratuity can be withheld only in accordance with the Full Bench Decision of this Court in ***CWJC No. 15328 of 2016 (Arvind Kumar Singh vs. the State of Bihar***



and Ors.) which remained relevant on the date i.e. 13.09.2018 . It is relevant to reproduce operating part of the Judgment which inter alia as follows:-

“ (2). As far as the second question is concerned, we answer it by holding that the law laid down by the Bench of this Court in the case of State of Bihar and others Vs. Mozaffar Hassan (supra) and by the learned Single Judge in the case of Ram Prakash Yadav (supra) and the law laid down in the case of Vijay Kumar Mishra (supra) to hold that gratuity can also be withheld under the provisions of the Bihar Pension Rules is an incorrect proposition of law. It has not been correctly held. Gratuity cannot be withheld in view of the provisions of Rule 43(c) of the Bihar Pension Rules and the discussion made by us hereinabove, to that extent the law laid down in the case of Vijay Kumar Mishra and Mozaffar Hassan (supra) by the coordinate Division Bench stand overruled.”

11. Per contra, learned counsel appearing on behalf of the respondents submit that, two Officers of the Education Department namely Sanjay Kumar, D.O., Bhagalpur and Mr. Baldeo Thakur, B.E.O., Pirpaiti Block, are present with the records. Records reveal that the departmental proceeding is



pending against the petitioner. The petitioner is appearing in the departmental proceeding and in support of the said statement he has referred to Annexure-D series letter dated 22.05.2020. The petitioner has suppressed the said fact in the writ petition and for that reason the writ petition is fit to be dismissed with heavy costs. He submits that after amendment of Rule 43 by inserting Rule D in the Bihar Pension Rules, 1950, in case of financial loss, the authorities are empowered to withhold the entire amount of gratuity and amount of loss which has been made to the Department.

12. Learned counsel further submit that there was every reasons for the District Programme Officer (Establishment) to withhold the total amount of gratuity of Rs. 8,50,000/- on the basis of report of the Drawing and Disbursing Officer, who is In-charge Principal of the School.

13. Heard the parties.

14. This Court has made a query from the District Education Officer to look into the records, relating to the petitioner to show where the time/year during which irregularity as alleged has been found and the amount quantified against the petitioner. The officers have not been able to produce record to substantiate the allegation made against the petitioner. The In-charge



Headmaster who is the drawing and disbursing Officer, had neither objected at the time of taking over the charge nor had taken the charge under protest. The District Education Officer, however, had forwarded the letter addressed by the In-charge Principal to the District Programme Officer (Establishment), upon which, the District Programme Officer(Establishment), on imaginary basis had assessed the proposed loss on account of furniture amounting to Rs.1,50,000/-, on account of Library dues Rs. 1,50,000/-, on account of playing materials Rs. 1,50,000/- and had quantified the total amount of Rs. 6,00,000/- only on the basis of allegation made by the In-charge Principal in his letter dated 04.09.2018 that the petitioner has not deposited Rs. 2,50,000/- in accordance with the Work Committee proceeding book. The District Education Officer, however, could not be able to produce any evidence from the records available with him in the Court in course of the present proceeding.

15. From perusal of the material which has been brought by way of counter affidavit and the record which has been produced before the Court by the District Education Officer and the Block Education Officer, it appears that the F.I.R. dated 17.05.2018 is only an after thought filed after delay of about four months and allegations made therein is not sustainable.



The Apex Court in the case of ***State of A.P. Vs. M. Madhusudhan Rao reported in (2008) 15 SCC 582 at para 30*** which has been held as follows:-

“30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.”

16. The Director, Secondary Education issued sanction for prosecution against the petitioner on 14.01.2019 and the departmental proceeding was initiated by serving a charge memo contained in Memo No. 2351, dated 06.11.2019. The sanction for prosecution reveal non application of mind. Authority is required to arrive at his own decision on the basis of material and evidence against the accused employee.



17. Considering this Court finds that the manner in which the In-charge Headmaster and the then District Programme Officer , District Education Officer and Block Education Officer, have proceeded against the petitioner on the basis of allegation made in the F.I.R., there appears to be malice in their action. From the perusal of the F.I.R. it would appear that the same is not based on sound material and *prima facie* it appears that the same cannot be accounted for any criminal overt act. F.I.R. can only be considered to have been lodged by the concerned respondent to harass the petitioner. This Court further finds that the Director, Secondary Education in a most mechanical manner, without going through the records of the case and the material available, as has been referred above, has sanctioned the prosecution which is not in accordance with law.

18. This Court finds it apposite to reproduce paragraph no. 17 of the Apex Court judgment in ***Mansukhlal Vithaldas Chauhan v. State of Gujarat, (1997) 7 SCC 622*** hereunder:-

“17. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government Servants against frivolous prosecutions. (See: Mohd.Iqbal



Ahmed vs. State of Andhra Pradesh, AIR 1979 SC 677). Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecutions and is a safeguard for the innocent but not a shield for the guilty.

18. *The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh v. State of Punjab [AIR 1958 SC 124 : 1958 SCR 762] and State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : 1991 Cri LJ 1438] .)*

19. *Since the validity of “sanction” depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own*



independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority “not to sanction” was taken away and it was compelled to act mechanically to sanction the prosecution.”

19. The admitted fact on the one hand is that the In-charge Headmaster had lodged the F.I.R. for the alleged offence for the incidence which had taken place on 31.01.2018. On the other hand record reveal that the In-charge Principal, Mr. Dadan Singh had accepted the charge on 31.01.2018 and he had received all the documents without any objection on the date of retirement of the petitioner in presence of the teaching and non-teaching



staffs of the School. The petitioner had also applied for “no dues certificate”, but for the reasons best known to the In-charge Headmaster, had remained silent for a long period and instead of issuing no dues certificate had lodged an F.I.R. Thereafter, the Incharge Headmaster being a Drawing and Disbursing Officer filed a written complain before the District Programme Officer (Establishment) that a total amount of Rs. 8,50,000/- has been misappropriated by the petitioner.

20.The departmental proceeding and the charge memo which has been served to the petitioner can only be held to be without jurisdiction and not sustainable in the eye of the law. Being bound by the provisions of CCA Rules, 2005 in discharge of their function at every stage, the authorities involved in the present case have failed to adhere to the provisions of CCA Rules, 2005. The relevant part of Rule 17 of Bihar Govt. Servants(C.C.A.) Rules, 2005 is being reproduced inter alia:

Rule 17. Procedure for imposing major penalties.

(3) Where it is proposed to hold an inquiry against a government servant under this Rule, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;



(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government Servant;

(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the Government Servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this Rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the Government Servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in Rule 18.

(b) If no written statement of defence is submitted by the Government Servant, the



disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this Rule an inquiry authority for the purpose, it may do so.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.

(emphasis supplied)

21. The Disciplinary Authorities did not supply to the petitioner all the relevant documents along with Form- “Ka” which are required to be made available to the petitioner for enabling him to defend his case and reply to charges as contained in the charge memo dated 06.11.2019. The respondents have also failed to bring on record the following documents of paramount importance in the present case:

(i) The District Education Officer, Bhagalpur’s Letter No. 2448 dated 05.10.2018 and Letter No. 2057 dated 21.08.2019, which has been mentioned in the Charge memo dated 06.11.2019 on the basis of which the Pirpaiti P.S. Case No. 119/18 dated 17.05.2018 was lodged against the petitioner for alleged irregularities and for



not handing over the documents , has not been brought on record by the respondents or given to the petitioner.

(ii) The District Education Officer, Bhagalpur's Letter No. 2448 dated 05.10.2018, District Officer, Bhagalpur's Letter No.229 dated 22.09.2018 and Senior Superintendent of Police, Bhagalpur's Letter No. 4224 dated 11.09.2018, on which reliance was placed by Director(Secondary Education), Bihar, Patna for issuing order of sanction against the petitioner dated 14.01.2019.

(iii) Letter No. 86/18 dated 04.09.2018 by the In-charge Principal Shri Durga High School related to forwarding of provisional pension/gratuity and no dues certificate of P.P.O. No. 201711052407PO of Shri Ashoka Kumar Singh(petitioner) , on the basis of which estimations were made by District Program Officer(Establishment), Education Department, Bihar in his order dated 13.09.2018, for deduction of Rs. 8,50,000/- from the gratuity amount payable to the petitioner has not been brought on record.

22. In view of the above mentioned facts and provision of Rules, where it was proposed to hold disciplinary proceeding against the petitioner, who retired as a government servant, amongst other things, a list of such documents and a list of such witnesses by which the articles of charge were proposed to be sustained should



have been made available to the petitioner. Thus, there is a distinct violation of statutory rules by the respondents in the present case. The very order dated 14.01.2019, holding up of the departmental proceeding against the petitioner by not supplying the relevant documents forming the subsistence of charge and the non-examination of witnesses and documents on the basis of which the petitioner was sought to be proceeded are wholly in violation of principle of natural justice. Such documents as mentioned above could not be considered to be the documents which were irrelevant if these were used as the basis of FIR, order of sanction and for order of recovery of Rs.8,50,000/- from the gratuity of the petitioner.

23. The order dated 13.09.2018, whereby recovery of Rs.8,50,000/- from the gratuity amount payable to the petitioner was allowed, were aimed at clearly overleaping the principle of *audi alteram partem*.

24. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim '*sublato fundamento cadit opus*' meaning thereby that foundation being removed, structure/work falls, comes into play and applies



on all scores in the present case. In ***Badrinath v. Government of Tamil Nadu, (2000) 8 SCC 395*** and ***State of Kerala v. Puthenkavu N.S.S.Karayogam, (2001) 10 SCC 191***, the Apex Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally. Similarly in ***Mangal Prasad Tamoli v. Narvadeshwar Mishra, (2005) 3 SCC 422***, the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside. Similarly, in the cases on hand, once the basis of the proceeding is quashed/gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is equally applicable to judicial, quasi-judicial and administrative proceedings also.

25. In view of the discussion above, provisions of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and the settled by the Apex Court and the Hon'ble Court the order dated 13.09.2018 and Form- "Ka" is hereby quashed.

26. The Additional Chief Secretary, Secondary Education is directed to look into the affairs of the School particularly the present School namely Shri Durga High School,



Govindpur Pirpaiti, Bhagalpur and other Schools in general where the retired teachers or employees of the School have to face hardship and have to move pillar to post for getting their retiral dues.

27. The Apex Court in the case of ***State of Punjab and Others v. Rafiq Mashi (White Washer) and Others*** reported in ***(2015) 4 SCC 334*** has held as follows:-

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a*



period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. “

28. The Additional Chief Secretary, Secondary Education is directed to forthwith release the amount of gratuity of Rs. 8,50,000/- to the petitioner within a period of two weeks. Action taken report is directed to be submitted after a period of six weeks by the Additional Chief Secretary, Secondary Education Department.

29. The personal appearance of District Education Officer and Block Education Officer is dispensed with.

30. This Court wants all the department heads not to take cognizance of such offence or complaint in which *prima facie* it is found to be vexatious and relating to private dispute between



the parties to save the dignity of institution. They must refrain from initiating departmental proceeding and sanctioning the prosecution in such cases in mechanical manner.

31. Accordingly, the writ petition is disposed of.

(Purnendu Singh, J)

pravinkumar/-

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Uploading Date	
Transmission Date	

