

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18537 of 2018

- 1.1. Sita Devi W/o Late Ram Jatan Prasad Sinha R/o Vill and P.O.- Sadipur, P.S.- Sadipur, Via- Pirpanty, District- Bhagalpur.
- 1.2. Krishna Devi D/o Late Ram Jatan Prasad Sinha R/o Vill and P.O.- Sadipur, P.S.- Sadipur, Via- Pirpanty, District- Bhagalpur.
- 1.3. Anjani Devi D/o Late Ram Jatan Prasad Sinha R/o Vill and P.O.- Sadipur, P.S.- Sadipur, Via- Pirpanty, District- Bhagalpur.
- 1.4. Sanjay Kumar Sinha S/o Late Ram Jatan Prasad Sinha R/o Vill and P.O.- Sadipur, P.S.- Sadipur, Via- Pirpanty, District- Bhagalpur.
- 1.5. Pravin Kumar S/o Late Ram Jatan Prasad Sinha R/o Vill and P.O.- Sadipur, P.S.- Sadipur, Via- Pirpanty, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Commissioner-cum-Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Accountant General, Govt. of Bihar, Patna.
4. The Joint Secretary, Human Resources Development Department, Government of Bihar, Patna.
5. The Director, Secondary Education, Govt. of Bihar, Patna.
6. The Deputy Director, Secondary Education, Bhagalpur Division, Bhagalpur.
7. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur.
8. The District Education Officer, Bhagalpur.
9. The Sub-Divisional Education Officer, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Singh, Advocate Mr. Prabhjot Singh, Advocate Mr. Uday Kumar, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Umesh Narayan Dubey, Advocate
For the A.G.	:	Mr. Raj Nandan Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

25 09-01-2024

Heard Mr. Rajeev Kumar Singh, learned counsel
appearing on behalf of the petitioners and Mr. Umesh Narayan
Dubey, learned counsel appearing on behalf of the State as well



as Mr. Raj Nandan Prasad, learned counsel for the Accountant General.

2. It is to be noted that during the pendency of the writ petition, the original writ petitioner died and vide order dated 30.07.2021, the legal heirs have been substituted in his place.

3. The original petitioner (since deceased) was duly appointed as Assistant Teacher on 26.08.1968, by the Governing Body, L.N. High School Malikpur Pirpaitee Bazar, Bhagalpur, and has subsequently been given the charge of Incharge Headmaster, in view of the order passed by the Chairman, Bihar Madhyamaik Shiksha Parishad.

4. It is the case of the deceased petitioner that on 11.07.1983, he was promoted to the post of Headmaster by the order of the Director, Secondary Education, Government of Bihar and subsequently transferred to Angiaya Vidya Bhawan High School, Banka, where he joined as Headmaster on 06.10.1993 and started to discharge his duty.

5. While the deceased petitioner was posted as Headmaster in the aforesaid school, he received an office order contained in memo no. 807 dated 31.12.1993, issued by the Director, Secondary Education, Government of Bihar, whereby one Mr. Fakhruddin was appointed as Assistant Teacher in the said school.



6. In view of the aforesaid office order, the petitioner (since deceased) has accepted the joining of Md. Fakhruddin and thereafter forwarded all the documents produced by him before the District Education Officer vide its letter no. 25.01.1994.

7. Upon verification of the documents, the Deputy Director, Secondary Education, Government of Bihar, Patna vide its memo no. 33 dated 25.02.1994 confirmed the appointment of Md. Fakhruddin on the post of Assistant Teacher.

8. In course of time, the deceased petitioner superannuated on 28.02.2001 and thereafter he has been accorded all his retiral benefits and other dues.

9. All of a sudden, vide memo no. 654 dated 31.03.2003, one memo of charge has been served upon the deceased petitioner under the signature of the Director, Secondary Education, Government of Bihar, stipulating two of the charges, firstly, alleging therein, that he has accepted the joining of the forged teacher, Md. Fakhruddin and, secondly as to why not a sum of Rs. 6,37,555/- be realized from the petitioner, paid in terms of salary to the forged teacher.

10. The deceased petitioner was put to departmental proceeding under Rule-43(b) and consequently vide letter No.



486 dated 24.04.2003, issued by the D.E.O. Banka, he was directed to file show cause. In response thereto the deceased petitioner gave a para wise reply to the show-cause denying all the charges. However, without there being any enquiry, all of a sudden, the Director Secondary Education, Government of Bihar, issued second show cause notice, without a copy of enquiry report. On demand being made a copy of enquiry report has been supplied and a detailed reply, has been submitted.

11. Thereafter, the Director, Secondary Education, Government of Bihar came out with an order, inflicting the punishment of withholding of 20% pension of the deceased petitioner, which order was put to challenge in C.J.W.C. No. 9493 of 2006. This Court having found apparent illegality, apart from violation of principles of natural justice, set aside the impugned order of punishment vide order dated 10.09.2008 and remitted the matter from the stage, the petitioner (since deceased) was given second show cause. However, the learned Court directed the respondents to ensure that the final order in the departmental proceeding is passed within six months from the date of filing of show cause reply.

12. It is next submitted that despite the order of this Court, as noted hereinabove, first time the show cause notice was issued on 29.04.2009 vide letter no. 105 but without any



documents, when the objection was raised, another show cause was issued and finally the deceased petitioner filed his reply on 31.05.2011, and ultimately the impugned order came to be passed by the respondent No. 4 as contained in memo No. 674 dated 09.08.2011, deducting 20% pension of the deceased petitioner.

13. The learned counsel for the petitioner while assailing the impugned order has submitted that apart from the same being passed in utter violation and against the spirit of the order passed by the Hon'ble Court in C.W.J.C. No. 9493/2006, no proper proceeding was held against the original petitioner, nor the relevant documents were provided or witnesses were examined nor reply of the petitioner was considered and the impugned order has been passed in a most mechanical manner and without applying any mind.

14. He also submits that it is also manifest from the record or even from the memo of charge, neither any Enquiry Officer was appointed to enquire into the allegation made against the original petitioner, nor there was presenting officer to represent the department, and, in fact, the very initiation of the departmental proceeding under Rule 43(b), was completely barred in view of proviso a(ii) of Rule 43(b) of Bihar Pension Rules, 1950.



15. He further submits that appointment letter was issued by the Director, Secondary Education which was duly affirmed by the Deputy Director of Secondary Education but surprisingly both the officers have not been put to even show cause notice nor any action has been taken and so far the petitioner (since deceased) is concerned, he has been proceeded departmentally after ten years of the date of the alleged joining of the forged teacher. Reliance has also been made on a judgment rendered by Supreme Court in the case of *State of Madhya Pradesh vs. Bani Singh (1990) supp. SCC 738*.

16. Referring to the infirmities in the departmental proceeding, he again reiterated that neither there was a witness to prove the appointment letter to be forged nor there was documents in support of the charges said to have been proved. There was no compliance of any statutory rules governing the departmental proceeding.

17. Per contra, learned counsel for the State submits that both the appointment letter as well as the verification letter said to have been issued by the Director Secondary Education as well as Deputy Director, Secondary Education, were forged and fabricated and the petitioner failed to abide by the statutory rules governing the procedure for acceptance of teacher to join a school and without making any proper verification, he accepted



the joining and thereby caused loss to the Government Exchequer to the tune of Rs. 6,37,555/-.

18. He next submitted that admittedly the joining of Md. Fakhruddin had taken place in the year 1993 but, the moment the department came to know about his appointment being forged, necessary action has been taken and the petitioner (since deceased) has been put to departmental proceeding, by issuance of a memo of charge, dated 31.03.2003 in accordance with law.

19. He further submits that earlier twice the petitioner(deceased) had come before this Court, firstly in CWJC No. 9493 of 2006, which was disposed of with a direction to expedite the departmental proceeding and pass final order within a period of six months from the date of the show cause replied by the petitioner. Subsequently the petitioner (deceased) again moved before this Court in CWJC No. 21992 of 2011, wherein this Court having found that the affidavit in the writ petition is thoroughly incomplete as there had been no compliance of the requirement of law and none of the statement in the writ petition was even verified, thus, after having found the writ petition not maintainable, liberty was given to the petitioner(deceased) to file the fresh writ petition. Thus the present writ petition.



20. Learned counsel for the State lastly submitted that all the procedures have been followed and having found the charges proved the impugned order of punishment, as contained in memo no. 674 dated 09.08.2011, has been passed, deducting 20% pension from the delinquent.

21. This Court having anxiously heard the parties and meticulously perused the materials available on record, finds that admittedly the appointment of Md. Fakhruddin was accepted by the petitioner(deceased) on 25.01.1994 and thus, the learned counsel for the petitioner rightly referred to proviso a(ii) to Rule 43(b) of the Bihar Pension Rules, 1950 which clearly stipulates a bar for initiation of any departmental proceeding in respect to any grave misconduct or negligence resulting into pecuniary loss to the Government, in respect of an event which took place more than four years before the institution of such proceeding.

22. It would be apposite to quote rule 43(b) (a) (ii) of the Bihar Pension Rules, 1950, which reads as under:-

“43. (b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is



found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that -

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i).....;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and ”

23. From the reading of the aforesaid provision, it is manifest that departmental proceedings shall have to be in respect of a misconduct which took place not more than four years before the initiation of such proceeding. This issue was also come up for consideration before the Hon'ble Apex Court in the case of ***State of Bihar & Ors. vs. Mohd. Idris Ansari, 1995 Supp (3) SCC 56*** paragraph no. 10 whereof is quoted herein below:-

“10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the



revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had, therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to



31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding



the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.”

24. Further, the Apex Court in the case of ***State of Uttar Pradesh and Ors. vs. Saroj Kumar Sinha, 2010 (2) SCC 772***, while emphasizing the status and duties of Enquiry Officer as an independent adjudicator has also held that in absence of any examination of oral evidence, the document(s) could not be proved and such documents could not have been taken into consideration to conclude that the charges have been proved against the delinquent, as has been held in paragraph no. 28, 29 and 30 thereof, which reads as follows:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not



supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly



unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."

25. From the record it is also evident that the entire proceeding was completed in a perfunctory manner, without proper information to the petitioner(deceased), that apart, in order to prove the charges neither there was any witness produced on behalf of the department nor even the documents have been exhibited and proved that both the appointment and verification report issued by the Director, Secondary Education as well as Deputy Director, Secondary Education were forged and fabricated. Obviously, in the afore-noted facts, the shortcomings/ illegalities imbibed in the departmental proceeding, leading to passing of the impugned order, has no sanction of law and thus, cannot be ignored.

26. Considering the aforesaid submissions and the settled proposition of law, this Court finds merit in the writ petition and the impugned order as contained in memo no. 674 dated 09.08.2011 issued under the signature of respondent no. 04 is



hereby set aside and the present writ petition stands allowed.

27. Needless to observe that on account of quashing of the impugned order, necessary consequential benefit(s) shall be accorded to the petitioners, preferably within a period of twelve weeks from the date of receipt/ production of a copy of this order, in accordance with law.

(Harish Kumar, J)

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