

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.428 of 2023

In
Civil Writ Jurisdiction Case No.9401 of 2020

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Jai Prakash Narayan Das Son of Santoshi Das @ Santoki Das, resident of Village- Lalpur Bhader, P.O. and P.S.- Kahalgaon, District- Bhagalpur (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Purnea Division, Purnea.
5. The District Education Officer, Katihar.
6. The District Programme Officer (Establishment), Katihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Lalan Kumar, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh, AAG-13
		Mr. Abhinav Alok, AC to AAG-13

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-02-2024

The appellant in the appeal is only aggrieved with the direction issued by the learned Single Judge to pass an order under Rule 43(b) of the Bihar Pension Rules, 1950 (for brevity, the Rules) to continue the enquiry in terms of the charges dated 20.02.2019.

2. The learned Government Advocate, however,



submits that the charges are very serious in nature and enquiry has to be continued.

3. There is no dispute that the government has the power to continue the enquiry, even after the retirement under Rule 43(b) of the Rules. The facts of the case indicate that an enquiry was conducted against charges alleged on 20.02.2019, and an order of dismissal was passed on 26.09.2019, after a departmental enquiry.

4. An appeal filed before the Appellate Authority was also rejected. On a writ petition being filed, the learned Single Judge found the enquiry to be defective and set it aside along with the Appellate order. The learned Single Judge also left liberty with the Government to continue the enquiry under Rule 43(b) of the Rules, if the appellant has retired. In fact, it was not just a liberty reserved; it was a positive direction to the Government to pass an order under Rule 43(b) of the Rules, which is challenged by the appellant in the appeal.

5. Admittedly, the appellant attained his superannuation on 31.10.2022. In such circumstances, the appropriate course would have been to leave liberty to the Government to decide if they have to proceed under Rule 43(b) of the Rules or not.



6. We only set aside the direction issued and direct the government to decide on the same within a period of three months from today. If it is decided to continue with the enquiry, then, of course, an order has to be passed and the appellant informed of the scheduled enquiry. If not, the appellant should be treated as restored in service and the entire salary paid to him, due till the date of retirement.

7. If an enquiry is conducted, then necessarily the appellant’s service would be subject to the result of the enquiry and in that circumstances, the Government could also decide on the pay and allowances due to him till the period on which he was dismissed from service, i.e., 26.02.2019.

8. The LPA stands disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.02.2024.
Transmission Date	

