

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21923 of 2013**

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Kalp Nath Pandey, Son Of Late Raghvendra Pandey, Resident of Village-  
Mundipur, P.O.- Huleshra, P.S. - Bhagwanpur Hat, District- Siwan, Retired  
Head Master, Government Basic School, Siswania, District - Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department (Primary Education) New Secretariat, Patna.
2. The Director, Human Resources Development Department (Primary Education), New Secretariat, Patna
3. The District Magistrate, Gopalganj
4. The Sub-Divisional Officer, Gopalganj
5. The Regional Deputy Director, Saran Division, Chapra
6. The District Education Officer, Gopalganj

... .. Respondent/s

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**Appearance :**

|                      |   |                                                                            |
|----------------------|---|----------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Mahesh Narayan Parbat, Sr. Advocate<br>Mr. Praveen Prabhakar, Advocate |
| For the State        | : | Mr. Sanjay Parasmani, AC to GP-4                                           |

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**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**

**Date : 08-01-2024**

1. Heard learned Senior Counsel for the petitioner and  
learned counsel for the respondents.

2. The petitioner has filed the instant application for  
the following relief(s):-

*“1.(a) To issue a writ of certiorari for quashing  
the office order as contained in memo no. 6/75-  
14/2003 dated 2.8.2003 (Annexure- 6), issued by the  
Director, Primary Education, through which the  
petitioner has been awarded punishment of  
withholding of his amount of gratuity and 10% of*



*pension permanently having found him guilty in alleged departmental proceeding initiated against him.*

*(b) To issue a further writ of certiorari for quashing the office order as contained in memo no. 472 dated 4.8.2003 (Annexure-7), issued by the District Education Officer, Gopalganj, through which the amount of gratuity of petitioner has been adjusted in compliance of aforesaid order dated 2.8.2003.*

*(c) To issue a further writ of mandamus, commanding the respondents not to withhold 10% of pension of petitioner and not to recover an amount of rupees 2,50,000/- from his amount of gratuity by way of punishment, de hors the rules, without holding any proper inquiry or departmental proceeding in this regard.*

*(d) To issue a writ of mandamus commanding the respondents to discharge their legal obligation to pay the dues arrear of salary of petitioner for the period in between 1992 to 30.4.1998 as applicable time to time, arrears of difference of revised salary for the period in between 1.4.1996 to 30.4.1998, Dearness Allowance at the rate of 45% since 1.5.1998 till date and also subsistence allowance of suspension period, after deducting the ad-hoc payments made in these regards, which have not been paid to him in illegal and arbitrary manner after revocation of his suspension yet.*

*(e) To issue further writ of mandamus commanding the respondents to pay the deducted amount of gratuity and 10% of pension of petitioner*



*which have been deducted in wholly illegal and arbitrary manner.*

*(f) To issue further writ of mandamus commanding the respondents to pay the entire dues amount of salary and dues amount of gratuity and pension of the petitioner aforesaid along with interest at the rate of 18% per annum since the date the amounts have become due, till the date of their respective payments.*

*(g) To any other relief or reliefs for which the petitioner may be found entitled to.”*

3. The case of the petitioner in brief is that while posted as the Headmaster in Government Basic School, Siswania, District Gopalganj in the year 1993, as a result of a conspiracy he was made an accused in Uchakagaon P.S. Case no.33 of 1993 registered under sections 409, 467, 468, 471 and 420 of the Indian Penal Code. The allegations levelled against the petitioner was that he allowed teachers appointed on the basis of forged and fabricated appointment letters to join the school on posts in excess of the sanctioned strength and as a result of the amount dispersed by way of salary to them etc, a total sum of Rs.3,74,112.63/- was defalcated.

4. Learned Senior Counsel for the petitioner submits that the petitioner was proceeded against both departmentally as also in the criminal case. So far as the criminal case is



concerned, the same ended in acquittal of the petitioner by judgment and order dated 21.12.1996 passed by the learned Judicial Magistrate, I<sup>st</sup> Class, Gopalganj in Trial no.334 of 1996. Even the appeal preferred against the said judgment of acquittal by the State of Bihar was dismissed by this Court on 2.8.2011 (Annexure-8).

5. So far as the departmental proceeding is concerned, it is submitted by learned Senior Counsel appearing for the petitioner that as would be evident from the inquiry report contained in Annexure-4 to the writ application, on the petitioner submitting his response before the Inquiry Officer, neither the District Education Officer nor any other person appeared before the Inquiry Officer in the departmental proceeding to substantiate the charges levelled against the petitioner. As such, the Inquiry Officer in his inquiry report came to the categorical finding that the respondents had been unable to prove the charges levelled against the petitioner.

6. In reference to the order dated 21.8.2002 (Annexure-5) learned Senior Counsel for the petitioner submits that on the petitioner retiring from service on 30.4.1998, the departmental proceeding was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules. It is further submitted



that inspite of the inquiry report (Annexure-4) not finding the charges against the petitioner to have been proved, the respondent Director, Primary Education came out with an order of punishment dated 2.8.2003 (Annexure-6) directing for recovery of a total sum of Rs.2.5 lacs from the petitioner by adjusting the same from the amount payable to the petitioner under the head of gratuity as also for permanent deduction of 10% of the pension payable to the petitioner.

7. Learned Senior Counsel appearing for the petitioner submits that the Inquiry Officer in the inquiry report having found that the charges against the petitioner were not proved, the respondent authorities differing with the contents of the inquiry report issued a second show-cause notice to the petitioner to which he submitted his reply. It is submitted from the contents of the inquiry report, that none of the respondent authorities appeared before the Inquiry Officer to prove the charges and thus there was no material whatsoever in support of the charges levelled against the petitioner. The order of punishment impugned herein is bad in law as also in facts and fit to be set aside.

8. In response, learned counsel for the respondents submitted that the Inquiry Officer in the inquiry report found the



charges against the petitioner to have been proved and it was only on humanitarian grounds that he recommended that the petitioner be let off. So far as the criminal case is concerned, it was submitted that the level of proof required in a criminal case compared to that required in the departmental proceeding are different and as such, no weight should be given to the acquittal of the petitioner in the criminal case so far as the departmental proceeding is concerned.

9. Having heard learned counsel and having perused the material on record, at the outset it may be mentioned here that by order dated 9.10.2023, the State respondents were directed to produce the original file relating to conduct of the departmental proceedings with respect to the petitioner.

10. The original records were not produced instead a counter affidavit and a supplementary counter affidavit was filed on behalf of the respondents stating therein that the file has been misplaced and for the same an FIR has been registered as Sachiwalaya P.S. Case no. 157 of 2023 on 7.11.2023.

11. From the material on record, it transpires that the petitioner was proceeded against departmentally, as stated above and an inquiry report was submitted by the Sub-Divisional Officer, Gopalganj as contained in his letter dated 7.9.2001



(Annexure-4). From perusal of the same it clearly transpires that the charges levelled against the petitioner in the departmental proceeding were not proved.

12. During pendency of the departmental proceedings, the petitioner having retired from service on 30.4.1998, the proceedings were converted into a proceeding under Rule 43(b) of the Bihar Pension Rules. The proceedings ended in an order of punishment dated 2.8.2003 (Annexure-6) imposing the punishment for recovery of Rs.2.5 lacs from the petitioner as also permanent deduction of 10% of his pension.

13. Having gone through the material on record, this Court is of the opinion that the respondent Inquiry Officer having come to the finding that charges against the petitioner were not proved, the respondents in case they differed with the inquiry report were not only required to give a show-cause notice to the petitioner stating the material and the reasons for their differing with the inquiry report, but in case they did not find the reply of the petitioner to be satisfactory, they were required to narrate in detail the facts and material available with them in the order of punishment. The order of punishment does not deal with any of the relevant facts, the reason for the authority differing with the inquiry report, the response of the



petitioner nor the reason as to why the petitioner's reply was not found to be satisfactory. The order of punishment only states that the charges of illegally accepting of joining of teachers and payment of salary to them is proved and the order of punishment is passed.

14. This Court further finds that it has been stated in the order of punishment that the Inquiry Officer in his inquiry report, exonerated the petitioner on humanitarian grounds in the departmental proceeding. This in the opinion of the Court is clearly an error of record and is not borne out from the contents of the inquiry report as contained in Annexure-4.

15. Having perused the material on record, this Court finds that for the aforesaid reasons, the order of punishment is illegal and not sustainable. Accordingly the order of punishment dated 2.8.2003 passed by the Director, Primary Education as contained in Annexure-6 to the writ application is hereby set aside with all consequential benefits.

16. The petitioner shall be paid full salary for the period that he was kept under suspension till the date of his retirement and full pension thereafter. The total dues shall be calculated and paid to the petitioner within a period of three months from today failing which the respondents shall pay cost



of Rs.10,000/- and simple interest on the total dues at the rate of 6% p.a. from today till the date of payment.

17. The writ application stands allowed.

**(Partha Sarthy, J)**

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