

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8434 of 2015

Naresh Mohan Jha S/o Late Jaideo Jha resident of Baunsi Mandir Road,
Baunsi, P.S. Baunsi, District - Banka

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna
2. The Principal Secretary, Deptt. of Education, Govt. of Bihar, Patna
3. The Secretary, Deptt. of Secondary Education, Govt. of Bihar, Patna
4. The Director, Secondary Education, Govt. of Bihar, Patna
5. Regional Deputy Director, Education, Bhagalpur Division, Bhagalpur
6. District Education officer, Banka
7. Head Master, CND High School, Baunsi, District - Banka

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Sharma, Advocate
For the Respondent/s : Mr. Santosh Kumar Jha, GP-3

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 29-03-2024

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

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

“1. That the present writ application is being filed for issuance of appropriate writ or writs, in the nature of the writ of (i) Certiorari quashing the order contained in Memo No. 408 dated 13.02.2015 (Annexure-8) issued by the Director, Secondary Education, respondent no. 4, whereby and whereunder the respondent no. 4 on



culminations of a departmental proceeding initiated against the petitioner has awarded the punishment of deduction of 5% of the amount on permanent basis from the pension payable to the petitioner and the entire departmental proceeding initiated against the petitioner through Annexure-1 (ii) Mandamus directing/ commanding and restraining the respondents from making such deduction from the amount of pension payable to the petitioner and stay of the operation of the impugned order contained in Annexure-8 pending disposal of the writ petition.”

3. The case of the petitioner in brief is that the petitioner who superannuated from service on 30.9.2007 while working as Headmaster, CND High School, Baunsi, Banka was proceeded against departmentally under section 43B of the Bihar Pension Rules. He was served with charge-sheet on 7.10.2009 and asked to file his reply to which he gave point wise reply on 25.1.2010. The inquiry was completed and the Inquiry Officer submitted the inquiry report (Annexure-4) on 15.2.2012.

4. The superannuation benefits of the petitioner not having been settled inspite of his having retired on 30.9.2007, the petitioner moved this Court in CWJC no.18441 of 2008 which was disposed of vide order dated 21.11.2013 with a



direction to the respondents to conclude the 43B proceeding within a reasonable time preferably within a period of six months. It was further observed that if after the end of the inquiry, the petitioner is exonerated, the respondents will have an obligation to expedite the payment of the retiral dues of the petitioner.

5. The respondents issued a second show cause notice to the petitioner on 15.9.2014 to which the petitioner replied on 23.9.2014. Thereafter the respondents came out with the order of punishment as contained in order dated 13.2.2015 under the signature of the Director (Secondary Education), Bihar, Patna imposing the punishment of deduction of 5 per cent amount of pension of the petitioner on permanent basis. It is against this order of punishment that the instant application has been preferred.

6. A counter affidavit has been filed on behalf of the Director, Secondary Education, Government of Bihar, stating therein that on receipt of the report of the District Education Officer, Banka vide letter dated 30.7.2008, the matter was examined in the department and vide order dated 7.10.2009 it was decided that a departmental proceeding be started under Rule 43B of the Bihar Pension Rules.



Accordingly, a charge-sheet was served on the petitioner on 7.10.2009. On receipt of the report dated 15.2.2012 of the Regional Deputy Director of Education, Bhagalpur Division, the petitioner was served with a second show cause notice on 29.10.2012 and reminders were also sent on 27.9.2013, 13.3.2014 as also on 15.9.2014. On receipt of the petitioner's reply on 23.9.2014, the reply was considered, not found satisfactory and in the opinion of the respondents, the charge was found proved. Accordingly, the matter was placed before the Government and the order of punishment of permanent deduction of 5 per cent pension was passed against the petitioner.

7. Having heard learned counsel for the parties and having perused the material on record, it may be mentioned here that vide order dated 24.11.2023 passed in the instant case, this Court directed the respondents to produce the original records with respect to the departmental proceeding of the petitioner. No records were produced. A further counter affidavit was filed on 13.12.2023 sworn by the Deputy Director, Secondary Education, Education Department, Government of Bihar stating therein that the original records of the departmental proceeding of the petitioner is missing and a



show cause notice has been issued to the concerned clerk who is the custodian of the said record.

8. On perusal of the material on records in the instant case it transpires that pursuant to the receipt of the charge-sheet which contained five charges, the petitioner submitted his point wise reply on 25.1.2010. The Inquiry Officer submitted his inquiry report dated 15.2.2012 (Annexure-4). A perusal of the said inquiry report would show that with respect to charge no.1 the Inquiry Officer states that it is difficult for him to give any opinion with respect to the same in absence of the relevant documents, with respect to charge no.2 it is stated that in absence of the relevant documents having been enclosed along with the charge-sheet, the said charge cannot be confirmed, with respect to charge no.3 it is stated that in absence of any evidence as also absence of documents as to which work was done by the petitioner without the permission of the Chairman/Authority, it is not proper to express any opinion, with respect to charge no.4 it was submitted that in absence of any documents, the same is not proved and with respect to charge no.5 it was stated that the same is not proved as the relevant documents have not been made available by the department. In sum and substance, the



Inquiry Officer was of the opinion that for the reasons as stated in the inquiry report, none of the five charges levelled against the petitioner in the departmental proceeding were proved.

9. Though the inquiry report was submitted on 15.2.2012 itself, nevertheless the respondents continued to sit over the matter. In the meantime, CWJC no.18441 of 2008 filed by the petitioner for his retiral dues was taken up by this Court and was disposed of by order dated 21.11.2013 directing the respondents to conclude the 43B proceedings within a reasonable period preferably within a period of six months.

10. In the meantime, the respondents served the petitioner with a second show notice dated 29.10.2012 which was followed by reminders dated 27.9.2013, 13.3.2014 and 15.9.2014. In the second show cause notice dated 29.10.2012 issued under the signature of the Director (Secondary Education), Bihar, Patna it was mentioned that in the inquiry report dated 15.2.2012, the Inquiry Officer ie the Regional Deputy Director of Education, Bhagalpur had not found the charges to be proved. Nevertheless with respect to charge no.5, it was stated that it was the responsibility of the petitioner to maintain the passbook and to deposit the amounts collected. The explanation given by the petitioner that inspite of



communication by him, account could not be opened was unacceptable. The petitioner was asked to file his reply to the second show cause notice followed by the aforesaid reminders. On the petitioner filing his reply on 23.9.2014, the order of punishment dated 13.2.2015, impugned herein was passed.

11. The question as to what should be the contents of the show cause notice and the purpose thereof came for consideration of the Hon'ble Supreme Court in the case of **Ram Kishan versus Union of India & ors. [(1995)6 SCC 157]**, wherein in paragraph no.10 it observed as follows:

“10. The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show- cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority



gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect.....”

12. So far as the facts of the instant case are concerned, as already seen above, the Enquiry Officer in the enquiry report dated 15.2.2012 came to the conclusion that none of the five charges mentioned against the petitioner in the chargesheet were proved. Though the disciplinary authority issued a show cause notice dated 29.10.2012 followed by the reminders on different dates, from perusal of the notice dated 29.10.2012 it would transpire that it only intended to differ with the contents of the inquiry report with respect to the charge no.5. However, in the notice dated 29.10.2012, even with respect to charge no.5 it was only stated that the amount collected by the petitioner was not deposited timely in the



account and the passbook was not maintained. The contents of the notice/letter dated 29.10.2012 would show that no reasons whatsoever has been given by the disciplinary authority for differing with the finding of the Inquiry Officer. While the Inquiry Officer states that in absence of the document having been made available, the charge against the petitioner could not be confirmed, the disciplinary authority does not state any reasons for his differing with the conclusion of the Inquiry Officer with respect to charge no.5 but only states that the reasoning given by the petitioner that inspite of communication the account could not be made operational is unacceptable. It also does not talk about any document having been made available by the department nor about any specific or even approximate amount which has not been deposited by the petitioner in the Bank account.

13. At this stage, it would be relevant to refer to and rely upon the judgment of the Hon'ble Supreme Court in the case of **Yoginath D. Bagde versus State of Maharashtra and another [(1999) 7 SCC739]** wherein it was held that a delinquent employee has the right of hearing not only during the enquiry proceedings but also at the stage at which those findings are considered by the Disciplinary Authority. If the



findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing the findings. Alongwith the show cause notice, the reasons on the basis of which the Disciplinary Authority disagreed with the findings must be communicated. It further held that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court to interfere in the matter. The High Court can interfere with the conclusions reached therein if there was no evidence to support the findings. The relevant paragraph no. 51 of the judgment is quoted hereinbelow for ready reference:

“51. It was lastly contended by Mr Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinised by the enquiry officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or Article 32 of the Constitution, act as the appellate authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr Salve is in very



broad terms and cannot be accepted. The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep Singh v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse.”

14. In the facts and circumstances of the case, taking into consideration the contents of the enquiry report



dated 15.2.2012 wherein none of the five charges levelled against the petitioner in the chargesheet were found to be proved together with the contents of the second show cause notice as contained in letter dated 29.10.2012 of the disciplinary authority to the petitioner wherein also neither any reason has been assigned nor any document referred to by the authority for differing with the contents of the inquiry report, in the opinion of this Court, there was no reasonable ground for passing the order of punishment of deduction of 5% pension on permanent basis against the petitioner.

15. Thus in view of the facts and circumstances of the case, the order of punishment as contained in memo no.408 dated 13.2.2015 issued under the signature of the Director (Secondary Education), Bihar, Patna passed under Rule 43B of the Bihar Pension Rules imposing punishment of deduction of 5% pension on permanent basis against the petitioner is not sustainable and is hereby set aside.

16. All the amount which may have been deducted from the pension of the petitioner pursuant to the above order of punishment dated 13.2.2015 shall be paid by the Director (Secondary Education), Bihar, Patna (respondent no.4) to the petitioner within a period of 3 months from the date of



receipt/production of a copy of this order.

17. The writ application stands allowed.

(Partha Sarthy, J)

Shiv/Bibhash

AFR/NAFR	
CAV DATE	21.12.2023
Uploading Date	29.3.2024
Transmission Date	

