

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13552 of 2014

- 1.1. Manju Mishra Wife of Late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).
- 1.2. Gaurab Kumar Jha Son of late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).
- 1.3. Sweta Jha Daughter of late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).
- 1.4. Sarika Jha Daughter of late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).
- 1.5. Asmita Jha Daughter of late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).
- 1.6. Lucy Jha Daughter of late Sheo Kumar Jha Resident of Golapara, Mani Baba Kutiya Road, Rasikpur P.S. Dumka, District- Dumka(Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Secondary Education, Govt. of Bihar, Patna
3. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur
4. The District Education Officer - cum - Department officer, Banka
5. The District Education officer - cum - Enquiry officer, Bhagalpur
6. The Head Master, M.R.D. High School, Banka

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mritunjay Prasad Singh, Advocate
For the Respondent/s : Mr. Asif Kalim, A.C. to A.A.G. 12

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 06-03-2024

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

2. The original petitioner has filed the instant application for the following reliefs:

“(1) For issuance of writ of certiorari for quashing the order dated 24.03.2014 passed by the Director,



Secondary Education, Govt. of Bihar, Patna by which he has punished petitioner under Rule 43(B) of Bihar Pension Rule for deduction of 10% from pension of petitioner which is illegal, erroneous, unjustified and improper.

(ii) For issuance of writ of mandamus commanding the respondent authorities directing them to pass the order in reference of report dated 21.06.2012 submitted the enquiry officer by which he has stated that petitioner has made expenditure keeping the money in his hand and not deposited in Bank, due to which there is loss of interest which can be realised from the petitioner.

(iii) For issuance of such other writ/writs, which may deem fit and proper for consideration.

(iv) For quashing the order dated 24.04.2015 passed by the Principal Seretary, Education Department, State of Bihar, Patna in appeal filed original writ petitiner (Sheo Kumar Jha) by the now dead (hereinafter referred as petitiner), against the order passed by the Director.(Secondary Educaion) Bihar Patna contained in Memo No.1162 dated 24.03.2014 (Annexure-14 of writ application) confirming the aforesaid order dated 24.03.2014 relying upon the same into without applying his own mind.”

3. While posted as the Headmaster of MRD High School, Banka, the original petitioner was proceeded against on 31.10.2008 and was asked to give his reply to the chargesheet contained in memo no.6964 Patna dated 31.10.2006 (Annexure-6) issued under the signature of the Director(Secondary Education), Bihar, Patna. The petitioner filed his reply and after considering the same, the second show cause notice was issued. On receiving reply to the second show cause notice, the order contained in memo no.1162 dated 24.3.2014 was passed by the



Director (Secondary Education), Bihar, Patna imposing the punishment of deduction of 10% pension under Rule 43B of the Bihar Pension Rules. The appeal preferred by the petitioner was rejected by order contained in memo no.1200 Patna dated 5.5.2015 passed by the Principal Secretary, Education Department, Bihar, Patna. The petitioner by filing the instant application and the subsequent interlocutory application which has been allowed has challenged both the order of punishment dated 24.3.2014 passed by the Director (Secondary Education) as also the order dated 5.5.2015 rejecting his appeal passed by the Principal Secretary, Education Department.

4. It is submitted by learned counsel for the petitioner that from reading of the chargesheet, his reply and the so called enquiry report which has now been brought on record as annexure to the supplementary counter affidavit filed on behalf of the respondent nos. 1 to 3 it would transpire that even as per the case of the respondents there is no allegation that any amount in the hands of the petitioner in his capacity as the Headmaster was defalcated.

5. Learned counsel for the petitioner submits that from perusal of the enquiry report it would transpire that the main allegation against the petitioner is that inspite of the directions to deposit the cash amount in his hand, he did not deposit the



same in the bank. His explanation that he was under threat and could not go to the Bank was unbelievable and thus rejected. Thus it is submitted that at best the short coming in the action of the original petitioner is that as a result of his not depositing the cash amount which he spent for the work of the school, as a result of non-deposit of the same in the bank, the interest on the amount was not earned. It is submitted that the order of punishment passed against the petitioner of deduction of 10% of his pension is grossly disproportionate to the allegations levelled, the same is not sustainable and thus be set aside with the direction to the respondents to pay the amount not paid to the original petitioner as a result of the said deduction.

6. The application is opposed by learned counsel appearing for the respondents.

7. It is submitted by learned counsel for the respondents that the original petitioner was issued show cause notice and given an opportunity to reply to the same. After considering his reply and conducting an enquiry, before passing any order of punishment, the second show cause notice was issued. It was only after receipt of the reply to the second show cause notice and having considered all the points raised by the petitioner, the order of punishment has been passed. It is submitted that there is no procedural illegality or irregularity in passing of the order of



punishment. The petitioner has not made out any case for interference and thus there being no merit in the writ application, the same be dismissed.

8. Having heard learned counsel for the parties and having perused the material on record, this Court finds that the allegation against the petitioner in the chargesheet dated 31.10.2008 which has been brought on record as Annexure-6 to the writ application is two folds. Firstly, that the amount in question with respect to the school was kept by the petitioner in cash in his hand and as a result of the irregularity in spending the same, the amount had been defalcated by the petitioner for which he is fully responsible. Secondly, that inspite of the directions, the petitioner did not deposit the amount in the Bank which shows his disrespect for the direction of the authorities.

9. This Court finds that having been given the opportunity to file his reply to the same and having considered his reply, the respondents are mainly relying on the enquiry report as contained in letter dated 3.5.2010 of the District Education Officer, Bhagalpur written to the Director (Secondary Education). On perusal of the contents thereof it transpires that the District Education Officer notes that inspite of his asking for the original records with respect to the matter in issue, the same was not made available either by the Headmistress of the school



in question or by the clerk Jai Ram Singh who is posted in the said school. They kept saying that the records was in possession of the other. The District Education Officer notes that as a result of non availability of the record, the proper detailed enquiry could not be conducted. It further transpires from the materials on record that though some irregularities was conducted by the original petitioner in not depositing the amount in the bank, however, subsequently the petitioner received the approval of the Managing Committee. This has not been denied by the respondents.

10. In view of the aforesaid facts and circumstances of the case, the expenses carried out by the original petitioner having received the approval of the Managing Committee and on the other hand, even the records not having been made available to the enquiry officer as is evident from the letter of the District Education Officer, Bhagalpur, in the opinion of the Court there was no basis for the respondents to come to the conclusion that there had been defalcation of any amount whatsoever, though, the original petitioner may have committed some irregularity in not depositing the amount in the bank.

11. In view of the facts and circumstances stated hereinabove and in view of the contents of the enquiry report as contained in letter dated 3.5.2010 of the District Education



Officer, Bhagalpur, neither the order of punishment dated 24.3.2014 passed by the Director (Secondary Education) Bihar, Patna nor the order rejecting the appeal of the petitioner contained in memo no.1200 dated 5.5.2015 passed by the Principal Secretary, Education Department, Bihar, Patna are sustainable and are both set aside.

12. The writ application is allowed.

13. The amount of 10% of the pension deducted from the pension of the original petitioner shall be calculated and paid by the District Education Officer, Banka (respondent no.4) to the petitioners herein within a period of 4 months of the receipt/production of a copy of this order.

(Partha Sarthy, J)

Bibhash

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CAV DATE	
Uploading Date	12.3.2024
Transmission Date	

