

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10196 of 2015

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Shri Sheshnath Singh son of Late Ramdat Singh, resident of Village- Kudh
Kala, P.O.- Mughalsaray, P.S.- Mughalsaray, District- Chandauli U.P..

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director, Secondary Education Department, Government of Bihar,
Patna.
3. The Assistant Director, Secondary Education Department, Government of
Bihar, Patna
4. The Regional Deputy Director, Patna Division, Patna.
5. The District Magistrate, District- Kaimur at Bhabhua.
6. The District Education Officer Bhabhua, District- Kaimur at Bhabhua.
7. The District Programme Officer, District- Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramchandra Singh
For the Respondent/s	:	Mr. Sc10 Sheo Shankar Pd.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

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| 8 | 14-05-2024 | <ol style="list-style-type: none">1. The present writ application has been filed for quashing the order, dated 14.05.2015, passed by Principal Secretary, Education Department, Government of Bihar, Patna, by which the departmental appeal, preferred by the petitioner, has been dismissed and the order of punishment, dated 26.12.2014, passed by Director, Secondary Education, has been upheld by which two per cent of the petitioner's pension has been deducted.2. The brief facts giving rise to the present writ application is that the petitioner was appointed in 1987 as Assistant Teacher in S.J. Ram High school, Bishunpur, Rohtas. During the course of his service, he was promoted to the |
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post of Headmaster and finally retired on 31.12.2013 from the post of Headmaster, High school Chhovon, Durgavati, Kaimur. During the service period, a Complaint Case No. 41 of 2004, under section 147, 148, 427, 504, 307 and 506 of the Indian Penal Code was instituted against the petitioner in which the petitioner surrendered and obtained bail during which he took casual leave from 24.04.2006 to 29.04.2006. He joined his school on 30.04.2006. The petitioner received his salary for the aforesaid period dated 24.04.2006 to 29.04.2006.

3. The District Education Officer, Kaimur, issued a show cause *vide* letter no. 864, dated 28.09.2006, to the petitioner asking the reason behind the petitioner taking the casual leave and further, whether prior information, in this regard, was given to the higher authority or the Incharge/Headmaster during the aforesaid period. The petitioner replied to the show cause but *vide* office order, dated 01.11.2006, he was directed to deposit the amount equivalent to four days salary for the period between 24.04.2006 to 28.04.2006 in Government Treasury and was further given censure/warning. The petitioner, in



compliance of the office order, dated 01.11.2006, deposited a sum of Rs.3,200/- in Government Treasury on 07.11.2006.

4. Subsequently, thereafter, upon a complaint / application, dated 24.01.2007 of one Jaishree, who had filed the complaint case against the petitioner before the Hon'ble Lokayukt, a show cause was issued to the petitioner again by the Director, Secondary Education, along with memo of charge, dated 20.03.2014 under Section 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the Rules). The charge against the petitioner was that he, being accused in the criminal case, was in custody from 24.04.2006 to 29.04.2006 and after being released on bail, without seeking lawful permission from the Controlling Officer/Departmental Authority, joined the School and by concealing the true fact, he got full salary for the month of April 2006 showing the period of custody as casual leave in attendance register.
5. Further, the petitioner, in connivance with the then D.E.O., Kaimur, got issued the office order, bearing memo no. 929 dated 01.11.2006 and misused the government fund.



6. The petitioner submitted his reply on 26.06.2014 to the show cause, dated 20.03.2014, stating therein that cause of action for initiating proceeding against the petitioner relates to April 2006 whereas, the present proceeding has been initiated in the year 2014 i.e., after more than 4 years. The Inquiry Officer submitted an inquiry report on 27.06.2014 before the Disciplinary Authority stating therein that petitioner got the salary for the period he was in jail by virtue of casual leave, which is wrong as per the Rules but on the instructions of the D.E.O., Kaimur, he deposited the amount of salary in the treasury for that period and the petitioner was exonerated from the charges by the D.E.O. who was not the competent authority. Further, the charge of defalcation/embezzlement of amount of four days salary is not proved, though the allegation of receiving salary for the term he was in jail is proved and also the allegation that the petitioner, after his release from jail without taking the permission from controlling authority, joined and started working in the school is proved.
7. The Assistant Director (Secondary Education) Bihar, Patna, issued second show cause to the petitioner *vide*



letter no. 2260, dated 13.08.2014, to which the petitioner replied on 16.09.2014 again taking the point that the charges against the petitioner is for the period 2006 whereas the proceeding under Rule 43(b) has been initiated after more than four years from the date the event of the occurrence took place. The disciplinary authority passed the impugned order of punishment on 26.12.2014 by which two per cent (2%) of petitioner's pension has been deducted.

8. Learned counsel for the petitioner contended that the petitioner has been punished again for the same charges by the impugned order inasmuch as the petitioner was already punished earlier by the District Education Officer *vide* office order, dated 01.11.2006, by which he was given the punishment of censure/warning and was also directed to deposit the amount equivalent to four days of salary in the Government Treasury. The order of punishment was acted upon and the petitioner deposited a sum of Rs. 3,200/- in the Government Treasury. He next contended that without any material/evidence on record it has been observed in the impugned order that the petitioner, in connivance with the District Education



Officer, got the punishment order, dated 01.11.2006, issued in his favour. From the inquiry report, dated 27.06.2014, it is clear that the department never produced any witness/evidence nor submitted anything against the petitioner in order to prove the allegation that the petitioner took the District Education Officer in his collusion. The Inquiry Officer even not found the aforesaid charges, against the petitioner, as true during the course of inquiry. The charge of defalcation and misuse of money has not been proved in the departmental inquiry. The Inquiry Officer has clearly mentioned the aforesaid charges as not proved. The petitioner has been acquitted from the criminal charges *vide* judgment, dated 07.01.2020, passed by the learned Additional Sessions Judge II, Chandauli, in Sessions Trial No. 24 of 2019.

9. It has been submitted that initiation of departmental proceeding itself is bad and barred by limitation inasmuch as after retirement, department proceeding shall not be initiated relating to an event which has taken place more than four years back. The memo of charge against the petitioner referred to an event which had taken place in 2006 whereas the proceeding against the petitioner has



been initiated under Rule 43(b) in 2014.

10. At last, he contended that the Presenting Officer did not produce any documentary evidence as per C.C.A. Rule, 2005. The inquiry thus is based on no evidence.
11. On the other hand, learned counsel for the state argued that the Lokayukt on the receipt of complaint, ordered to take action against the petitioner and the D.E.O., who exempted the petitioner from the charges. Upon receipt of the said order, the departmental proceeding was initiated against the petitioner. After considering the reply of the petitioner which was not found satisfactory, the departmental proceeding was initiated under Section 43(b) of the Bihar Pension Rule, 1950 and order of punishment was passed by which 2% of the petitioner's pension was forfeited. He next submitted that acquittal from the criminal charges is no bar in initiating departmental proceeding against the delinquent employee and the Presenting Officer did not produce any documentary evidence or witnesses during the course of departmental proceeding is an afterthought by the petitioner and a vague statement as this defence was not taken earlier by the petitioner before any other authority.



12. I have heard learned counsel for the parties and have gone through the impugned order including the memo of charge. From perusal of the memo of charge, it transpires that the charge against the petitioner relates back to an event which had taken place between 24.02.2006 to 29.02.2006. In the case of The State of Bihar and others vs. Mohd. Idris Ansari reported in 1995 Supp (3) SCC 56, it has been held that the power under Rule 43(b) of the Rules can be exercised in connection with the misconduct of a retired government servant which took place not more than four years, prior to initiation of such proceeding. From perusal of Rule 43(b)(2) of the Rules, it is evident that invocation of the Rule is subject to the rider that the departmental proceeding shall have to be in respect of misconduct which took place not more than four years before the initiation of the proceeding. It has been alleged in the memo of charge that the petitioner, being accused in a criminal case, was in custody from 24.04.2006 to 29.04.2006 and after being released on bail, joined the school by concealing the true fact and got full salary for the month of April, 2006, by showing the period of custody as casual leave in attendance register.



Admittedly, Rule 43(b) has been invoked against the petitioner in the year 2014 by serving memo of charge upon him for the event which had taken place in the year 2006 i.e., beyond a period of four years. The petitioner, admittedly, retired on 31.12.2013. On bare perusal of the memo of charge, it is evident that the charge against the petitioner pertains to an event/misconduct which took place more than four years prior to the initiation of departmental proceeding under Section 43(b). The very initiation of the departmental proceeding against the petitioner under Rule 43(b) for Pension Rule is bad in law and is contrary to the provisions prescribed under Section 43(b)(2) of the Rules, inasmuch as disciplinary authority which issued the memo of charge upon the petitioner had no power to invoke Rule 43(b) of the Rules in relation to the event/misconduct, which took place more than four years prior to the date of initiation of departmental proceeding after retirement.

13. This Court also finds that even after the memo of charge being served upon the petitioner for the charges he was earlier punished, the departmental proceeding was not



completed as per the established procedure/law inasmuch as no witness was introduced/examined by the Presenting Officer. The Presenting Officer did not lead any evidence documentary and/or oral in order to prove the charges. The order of punishment, therefore, is invalid on both the counts. Firstly, the same being in violation of Rule 43(b) of the Rules and secondly on the ground that there was gross procedural defects in conducting the departmental proceeding.

14. On consideration of the aforesaid discussion, the order of punishment, dated 26.12.2014, passed by Director, Secondary Education is hereby quashed. Consequently, the appellate order, dated 14.05.2015, passed by Principal Secretary, Education Department, Government of Bihar, Patna is also quashed. The petitioner shall be entitled to all consequential monetary benefits consequent upon the quashing of the order of punishment.

15. In the result, the application is allowed.

(Anil Kumar Sinha, J)

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