

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14922 of 2024

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Jai Jai Ram Roy Son of Late Basant Roy Resident of Village- Dasaut Via
Singhia, P.O. Dasaut, P.S. Hathauri, District Samatipur. PIN-848209.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Director (Administration)-Cum-Additional Secretary, Education Department, Govt. of Bihar, Patna.
3. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate Mr. Pranav Kumar, Advocate Mr. Rajendra Kumar, Advocate
For the Respondent/s	:	Mrs. Binita Singh, SC-28
For the Accountant General :		Mr. Ram Yash Singh, Advocate Mr. Utkarsh Bhushan, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 03-10-2024 The instant case is a classical example of exploitation
of a retired employee by the powerful State Authority.

2. The petitioner used to render his service as Programme Officer under Bihar Education Service. On 17.12.2014, he recommended names of some candidates belonging to general caste of Mohammedan Community for recruitment on the post of Teachers/Volunteers of Markaz. The department found that he wrongly sent the names of the said candidates and contemplated for disciplinary proceeding. However, no disciplinary proceeding was initiated.

3. The petitioner retired from service on 31.07.2020.



After expiry of more than four years of his retirement, the respondent authority decided to initiate a departmental proceeding under Section 43(b) of Bihar Pension Rules alleging, inter-alia, that the recommendation made by the petitioner in the year 2014 for appointment of volunteers in Markaz was illegal and influenced by some extraneous consideration. Pending disciplinary proceeding, the respondent authority passed an order withholding 10% pension and 10% gratuity of the petitioner violating the proviso to Section 43(b) of the Bihar Pension Rules.

4. It is submitted by the learned Advocate for the petitioner that the Hon'ble Supreme Court has already decided in the case of *State of Bihar & Ors. Vs. Mohd. Idris Ansari* reported in *1995 Suppl.(3) SCC 56* that no departmental proceeding can be initiated against a retired employee after considerable period of time from the date of his retirement. He also refers to the proviso of Section 43(b), which runs thus:-

“43. (a)

1[(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government



if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that –

(a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub- clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed”.

5. Thus, it is contended by the learned Advocate for the petitioner that the disciplinary proceeding is barred by



proviso (a)(ii) of Section 43(b), which obligates the respondent authority that any disciplinary proceeding under Section 43(b) shall be initiated in respect of an event which took place not more than four years before the institution of such proceeding.

6. In the instant case, the alleged incident took place in the year 2014, the petitioner retired from service in the year 2020 and in the year 2024, the respondent authority is contemplating for initiating disciplinary proceeding.

7. The learned Advocate on behalf of the respondent-State submits that the disciplinary proceeding was contemplated in the year 2014 itself but it was not initiated. The memorandum of charge was submitted to the petitioner on 09.06.2020 before his retirement. Subsequently, the said proceeding was converted to a proceeding under Section 43(b) of Bihar Pension Rules, therefore, the petitioner cannot claim any benefit of proviso (a) (ii) of Section 43(b) of the Bihar Pension Rules.

8. Having heard the learned Advocate for the petitioner, and on perusal of the materials on record, this Court finds that the issue as to whether general class of Mohammedan Community is entitled to be recommended for the post of Volunteers in Markaz was decided by this Court in C.W.J.C. No.11447 of 2018 (Mohd. Ezaz Kausar Khan & Ors. Vs. The



State of Bihar & Ors.). In the said judgment, a Coordinate Bench decided that in the event of non-availability of EBC Candidates from Mohammedan Community, general class candidates may be recommended for the post of Volunteers in Markaz.

9. The learned Advocate on behalf of the State-Respondents submits that against the aforesaid order, an appeal is pending before the Division Bench of this Court. In the said appeal, the Division Bench has not passed any order of stay of operation of the order passed by the Single Bench in the aforesaid writ petition. Therefore, the respondents Authority cannot hold that the act of the petitioner by sending names of general class of Mohammedan Community is illegal and amounts to misconduct, for which he is liable to a disciplinary proceeding.

10. Moreover, recommendation of such young man for the post of Volunteers in Markaz is not giving employment to them. The right to employ such persons rested in the higher authority of the petitioner. An employee may recommend, some names violating the norms of recommendation, if the names were recommended by the petitioner violating the norms, the respondent Authority would not employ them as Volunteers or



direct the petitioner to send fresh names from EBC Candidates.
Only by recommending the names the petitioner did not commit
any misconduct under the service jurisprudence.

11. For the reasons stated above, this Court is
constrained to hold that the disciplinary proceeding
contemplated by the respondent Authority is unfair, unjust and
arbitrary. Accordingly, the decision of the respondents to initiate
disciplinary proceeding against the petitioner is quashed and set
aside.

12. With the above order, the instant writ petition is
disposed of.

(Bibek Chaudhuri, J)

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