

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.468 of 2020

Basudeo Prasad Sah @ Vasudeo Prasad Sah Son of Late Ram Sharan Sah
Resident of- East Gurhatta Road, Gurhatta Chowk, Mirjanhat, Police Station-
Mojahidpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Primary Education, Department of Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur.
5. The District Education Officer, Bhagalpur.
6. The District Programme Officer (Establishment), Education Department, Bhagalpur.
7. The Programme Officer (Establishment), Education Department, Bhagalpur namely Sri Krishnanand Sada cum Inquiry Officer.
8. The Block Education Officer, Shakhund-cum- Presenting Officer.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha
For the Respondent/s : Mr. Prabhakar Jha (Gp27)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 23-09-2024

Heard learned counsels for the parties.

2. The present writ application has been filed on behalf of
the petitioner for the following reliefs:-

(i) For quashing of the order contained in memo no.2315 dated 25.08.2015, issued under the signature of the District Programme Officer (Establishment), Education Department, Bhagalpur, whereby the pension of the petitioner has been forfeited under the provisions of Rule



43(a) of the Bihar Pension Rules.

(ii) For directing the respondent to produce a copy of enquiry report contained in letter no.157 dated 17.11.2012 and further be pleased to quash the same as the same is perverse and based upon no evidence.

(iii) For directing the respondents to sanction full pension and gratuity to the petitioner apart from other consequential retirement benefits payable to him.

(iv) For any other writ, order or direction which may deem fit and proper in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits the case at length is that petitioner was working as Headmaster of the Middle School Ratanganj-cum-Drawing and Disbursing Officer, he was arrested by the Vigilance Investigation Bureau while accepting bribe on 27.09.2011. Accordingly, Vigilance P.S. Case No.74 of 2011 was registered under Section 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act. Thereafter, the petitioner was put under suspension vide office order contained in letter no.1009 dated 01.10.2011 issued under signature of the District Programme Officer (Establishment), Human Recourse Development Department, Bhagalpur. (Annexure-P-1 of the writ application).

4. He further submits that petitioner was granted bail in



the aforesaid Vigilance case vide order dated 19.04.2012 passed in Cr. Misc. No.42485 of 2011. (Annexure-P-2 of the writ application). After release from custody on 21.04.2012, petitioner submitted his joining before the Block Education Officer, Sanhaura, Bhagalpur on 24.04.2012. (Annexure-P-3 of the writ application).

5. The District Programme Officer (Establishment), Education Department, Bhagalpur issued *prapatra* “Ka” against the petitioner vide memo no.2688 dated 18.09.2012 for the charge of (1) arrested red handed by the Vigilance Investigation Bureau while accepting bribe and (2) for languishing in judicial custody since 27.09.2011 to 21.04.2012. In this context, neither the copy of documents nor list of witnesses were served upon the petitioner upon which the charges are proposed to be proved. (Annexure-P-5 of the writ application).

6. He further submits that petitioner submitted reply of the show cause explanation before the Programme Officer, Establishment, Education Department, Bhagalpur on 18.10.2012 by denying each and every charges by raising demand of certain documents as incorporated in para-6 in order to submit detailed reply of each and every charge



levelled against him but the documents were not provided to the petitioner. (Annexure-P-6 of the writ application).

7. The Programme Officer, Establishment, Education Department, Bhagalpur vide letter contained in memo no.143 dated 18.10.2012 issued reminder to petitioner for submitting reply to the charge memo. In response thereto, petitioner submitted an application on 20.10.2012 informing him that some documents were demanded by the petitioner on 18.10.2012 but till date documents were not provided enabling him to submit detailed reply to the charges. (Annexure-P-7 series).

8. He further submits that after conducting inquiry, the Inquiry Officer has submitted report vide letter no.157 dated 17.11.2012 but neither copy of inquiry report was served upon the petitioner nor any show cause was issued to him.

9. The District Programme Officer, Establishment, Education Department, Bhagalpur vide office order contained in memo no.2964 dated 12.06.2013 revoked the suspension of the petitioner from the date of joining in the headquarter i.e. 24.04.2012 by keeping him under departmental inquiry and apart from that he was transferred to Government Middle School Hasanganj, Nagar Nigam, Bhagalpur. (Annexure-P-8



of the writ application).

10. Thereafter, the petitioner was relieved for submitting joining at Government Middle School Hasanganj, Nagar Nigam, Bhagalpur vide Office order contained in memo no.397 dated 24.06.2013 under the signature of the Block Education Officer, Sanhaura, Bhagalpur. Accordingly, the petitioner submitted joining before the School Sub Inspector, Nagar Nigam, Bhagalpur on 24.04.2013. (Annexure-P-9 series of the writ application).

11. He further submits that the petitioner retired from service on 31.07.2013. Thereafter, provisional pension, earn leave, group life insurance, provisional gratuity were granted/allowed to him vide office order/letters issued under the signature of the District Programme Officer, Establishment, Education Department, Bhagalpur contained in memo no.1564 dated 12.11.2013, memo no.5080 dated 25.10.2013, memo no.5081 dated 25.10.2013, memo no.1563 dated 12.11.2013 respectively. The District Provident Officer, GPF Office, Bhagalpur vide letter dated 23.01.2014 authorized the District Programme Officer, Establishment, Education Department, Bhagalpur to draw the GPF amount of Rs.11,38,397/- of petitioner but the payment of the same



was withheld by the District Programme Officer, Establishment, Education Department, Bhagalpur.

12. He further submits that the District Programme Officer, Establishment, Education Department, Bhagalpur vide letter contained in memo no.159 dated 07.02.2014 sought guidelines from the Director Primary Education, Patna, Bihar for the final sanction of the pension as well as gratuity to the petitioner and the payment of GPF amount to him and apart from that he also sought direction for further departmental proceeding in condition of retirement of petitioner on 31.07.2013. (Annexure-P-10 of the writ application).

13. That the Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur vide letter dated 04.08.2015 sought status report with respect to the petitioner from the District Programme Officer, Establishment, Education Department, Bhagalpur. (Annexure-P-11 of the writ application).

14. The District Programme Officer, Establishment, Education Department, Bhagalpur submitted status report with respect to the petitioner on 04.08.2015 stating therein that the earn leave, group life insurance and GPF amount has



been paid to the petitioner and 90% of gratuity amount has been sanctioned and provisional pension has been paid till February 2015 and currently provisional pension has not been paid to him. (Annexure-P-12 of the writ application).

15. The Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur vide letter bearing no.551 dated 06.08.2015 issued direction to the District Programme Officer, Establishment, Education Department, Bhagalpur to take final decision upon the inquiry report with respect to the petitioner and submit compliance report. Thereafter, the Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur vide letter bearing no.590 dated 17.08.2015 issued reminder to the District Programme Officer, Establishment, Education Department, Bhagalpur for compliance report. (Annexure-P-13 series of the writ application).

16. He further submits that the District Programme Officer, Establishment, Education Department, Bhagalpur issued office order contained in memo no.2315 dated 25.08.2015, whereby the pension of the petitioner has been forfeited under the provisions of Rule 43(a) of the Bihar Pension Rules. (Annexure-P-14 of the writ application).

17. He further submits that there is clear distinction



between rule 43(a) and rule 43(b) of the Bihar Pension Rules. The decision under rule 43(a) is not on account of any departmental proceeding or judicial proceeding instituted when the Government servant was in service or instituted later in respect of an event which relates to his services rendered before the retirement or on re-employment. On the other hand the purpose of rule 43(b) is clearly to enable the State Government to continue or initiate a departmental or judicial proceeding in respect of omission or commission by a Government Servant done while he was in public service. Therefore, the pension of petitioner cannot be forfeited by invoking the rule 43(a) of the Bihar Pension Rules as the charge memo was issued vide letter contained in memo no.2668 dated 18.09.2012 and the petitioner was retired on 01.08.2013.

18. He further submits that there is no evidence available on the record to show that the petitioner was caught red handed while accepting bribe in absence of non-examination of complainant, members of raiding party, investigation officer as well as non-production of any material collected during course of investigation i.e. FIR, pre tape and past trap memorandum etc. during course of departmental proceeding



and as such the findings of the inquiry officer is perverse as the same is based on no evidence. Thus, the act of the respondents is illegal, void and unreasonable against the settled principles of law as well as judicial precedents.

19. He relied upon the judgment of this Court in C.W.J.C. No.5042 of 2016 dated 04.09.2017 (Annexure-P-17 of the petitioner's rejoinder to the counter-affidavit) in which a co-ordinate Bench of this Court held that in the petitioner's case, mandatory provisions of the Rule 17(3) (4) and (5) have not been followed, and he has not been granted any opportunity of filing show cause before initiation of departmental proceedings. Thus, the entire departmental proceeding was fit to be quashed solely on this ground itself, in view of the catena of judgments of this Court followed by the directive of the General Administration Department.

20. A counter affidavit is filed on behalf of the respondent no.6. It is submitted by the learned counsel on behalf of the respondent no.6 that petitioner was caught red handed by the Vigilance Police while accepting bribe and that action on the part of the petitioner amounts to severe misconduct. For the aforesaid act, Vigilance P.S. Case No.74 of 2011 was instituted under Section 7 and 13 (2) of the Prevention of



Corruption Act. In the aforesaid criminal case, the competent authority has accorded sanction for proceeding in Vigilance P.S. Case No.74 of 2011 against the petitioner.

21. The respondent authority decided to initiate departmental proceeding against the petitioner but the petitioner failed to defend his case and due to non-cooperation of the petitioner, no witness has been examined in the departmental proceeding.

22. He further pointed out that Rule 43(c) of the Bihar Pension Rule stipulates that where the departmental proceeding or the judicial proceeding is pending the Government servant at the time of retirement, full amount of gratuity may be withheld till the final conclusion of the departmental proceeding or the judicial proceeding. In the petitioner's case, the competent authority has accorded sanction for proceeding in Vigilance P.S. Case No.74 of 2011 against the petitioner and the same is still pending. On account of the pendency of the case, the pension of the petitioner has been withheld and in the aforesaid background the present writ application is not fit to be allowed.

23. He further submitted that the grievance of the petitioner with regard to the payment of GPF is concerned,



the payment of GPF of Rs.11,38,398/- has already been paid to the petitioner and due to zero tolerance policy against the corruption, the pension of the petitioner has been seized vide order contained in Memo No.2315 dated 25.08.2015 and as such the deponent prays before this Court to dispose of the present case.

24. Having regards to the facts and circumstances of the case, it is an admitted fact that no enquiry report has been produced neither any of the witness has been examined in the departmental proceedings, even the Vigilance Officer was not examined and only on the basis of the FIR, petitioner was sent to the judicial custody.

25. Considering the order passed by this Court in C.W.J.C. No. 5042 of 2016 dated 04.09.2017 (Annexure-P-17 of the petitioner's rejoinder to the counter-affidavit) and considering that no inquiry report and show cause was given to the petitioner to defend his case, I am inclined to allow this writ application. The order contained in memo no.2315 dated 25.08.2015, issued under the signature of the District Programme Officer (Establishment), Education Department, Bhagalpur is hereby quashed.

26. The petitioner is entitled to get all the consequential



benefits and the authority concerned is directed to sanction full pension and gratuity apart from all other consequential benefits to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2024
Transmission Date	NA

