

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1595 of 2019

In
Civil Writ Jurisdiction Case No.872 of 2017

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1. The State Of Bihar through The Principal Secretary, Department of Education, Government of Bihar, New Secretariate, Patna.
 2. The Director, Secondary Education, Department of Education, Government of Bihar, New Secretariat, Patna.
 3. The District Magistrate, Munger.
 4. The Regional Deputy Director of Education, Munger.
 5. The Sub Divisional Officer, Tarapur, Munger.
 6. The District Education Officer, Munger.

... .. Appellant/s

Versus

Ram Manohar Singh, Son of Pabrit Singh, resident of Village- Ratanpur, P.D.-
Gidhour, District- Jamui.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sri Krishna Ranjan (Ac To Gp 17) Mr.Amit Bhushan, Ac to Gp12
For the Respondent/s	:	Mr.Tej Bahadur Singh, Sr. Advocate Mr.Vatsal Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-07-2024

Appellant-State have assailed the order of the learned
Single Judge dated 15.07.2019 passed in CWJC No. 8721 of 2017.

Re:I.A. No. 1 of 2020

2. Heard I.A. No. 1 of 2020, there is a delay of about 111
days. In this regard, I.A. No. 1 of 2020 has been filed for



condonation of delay in filing LPA No. 1595 of 2019. We are satisfied with the reasons for condonation of delay for about 111 days. Accordingly, the delay of about 111 days in filing LPA No. 1595 of 2019 stands condoned. Hence, I.A. No. 1 of 2020 stands allowed.

3. With the consent of learned counsels for the respective parties, the present LPA No. 1595 of 2019 is taken up for final disposal. Brief facts of the case are that Respondent – *Ram Manohar Singh* while working as a Head Master, he is alleged to have committed certain mis-conduct including remaining absence. He was placed under suspension on 06.07.2009 simultaneously departmental inquiry was initiated by framing 9 charges. Respondent was aggrieved by the suspension order and filed writ petition before this Court and it was allowed. Thereafter, during pendency of the departmental inquiry he has attained age of superannuation and retired from service on 31.01.2011. Inquiring Officer has submitted a report while holding that Charge Nos. 1, 6 and 7 were proved and Charge No. 2 was partially proved. On receipt of Inquiring Officer's report Disciplinary Authority – Director Secondary Education, Bihar issued a second show-cause notice on 19.06.2014, since there was no reply from the respondent after that a reminder was sent on



06.10.2015. Thereafter, Director Secondary Education, Bihar proceeded to pass a final order in the departmental inquiry while imposing penalty to the extent of reduction of 50% pension of the respondent.

4. Feeling aggrieved by the order of penalty, respondent has filed CWJC No. 872 of 2017 and it was decided on 15.07.2019 in favour of the respondent.

5. Feeling aggrieved by the order of learned Single Judge, the present LPA has been preferred by the State of Bihar.

6. Learned counsel for the appellants submitted that having regard to the alleged charges which were proved in the departmental inquiry read with the imposition of penalty, learned Single Judge should not have interfered. It is submitted that in the absence of legal grounds, the learned Single Judge allowed CWJC. It is also submitted that scope of judicial review in respect of departmental inquiry is limited only procedural aspect and law has been violated in the course of departmental inquiry and its conclusion, to that extent order of learned Single is liable to be set aside.

7. *Per contra*, learned counsel for the respondent resisted the aforementioned contentions and submitted that learned Single Judge has taken note of that there are procedural



irregularities in the process of departmental inquiry. In fact he has pointed out extract of the counter affidavit filed on behalf of the appellants in which one of the contention is that service of second show-cause notice. Appellants have admitted that they have not issued a second show-cause notice to the extent of serving the second show-cause notice on the respondent. Thus, learned Single Judge has taken note of the aforementioned procedural error. Further, it is submitted that respondent is aged about 74 years, therefore, it is not a case for remand.

8. Heard learned counsels for the respective parties.

9. Undisputed facts are that respondent was subjected to disciplinary proceedings on 9 charges including certain alleged financial irregularities. The respondent has not been provided an opportunity of second show-cause notice along with Inquiring Officer's report. That apart second show-cause notice stated to have been prepared by the Director, Secondary Education, Bihar and so also final order of punishment of reduction of 50% pension was under Rule 43(b) of Bihar Pension Rules, 1950, as on the date of passing of penalty order on 25.04.2016 rule is specific to the extent that only the State Government is empowered to take action in respect of retired government servants while invoking Rule 43(b) of Bihar Pension Rules, 1950. Therefore, Director,



Secondary Education, Bihar has no power to proceed further on the receipt of Inquiring Officer's report. In fact, Director should have forwarded the papers of departmental inquiry along with inquiry report to the State Government for taking further steps in the light of language employed under Rule 43(b) of Bihar Pension Rules, 1950 to that effect impugned order of reduction of 50% pension is defective.

10. It is a case of remand for the reasons that certain financial irregularities are one of the charges levelled against the respondent. **Hon'ble Supreme Court in the case of Managing Director, ECIL vs. B. Karunakaran** reported in (1993) 4 SCC 727, **Chairman-cum-Managing Director, Coal India Ltd. And Ors. vs. Ananta Saha and Ors.** reported in (2011) 5 SCC 142 and **State of Uttar Pradesh & Ors. vs. Prabhat Kumar** reported in 2022 Live Law SC 736, in all these three decisions the principles laid down by the Hon'ble Supreme Court is to the extent that in the event of quashing of penalty order arising out of departmental inquiry on technicality and if any financial irregularities are forthcoming, in such circumstances matter is required to be remanded to the concerned official respondent to proceed further from the defective stage. In the present case, one of the charges relating to financial irregularities alleged to have committed by the



respondent. Therefore, matter is remanded to the State Government to proceed from stage of receipt of Inquiring Officer's report. In issuing second show-cause notice along with Inquiring Officer report to the respondent. The respondent is hereby directed to file his objections on the Inquiring Officer's report as well as second show-cause notice to be furnished to him. Thereafter, the State Government is hereby directed to pass a detailed speaking order after due consideration of each of the contention to be raised by the respondent in his explanation/reply to the second show-cause notice along with Inquiry Officer's report.

11. The above exercise shall be completed within a period of four months from the date of receipt of this order. To the above extent order learned Single Judge dated 15.07.2019 passed in CWJC No. 872 of 2017 stands modified.

12. Accordingly, the present LPA No. 1595 of 2019 is allowed in part. Penalty order issued vide Memo No. 913 dated 25.04.2016 at Annexure-15 stands set aside. In the result, calculate difference of with held 50% pension and disburse the same within a period of three months.

13. At this stage, learned counsel for the respondent submitted that gratuity amount has not been settled by the official appellants. The concerned appellants are hereby directed to take



note of whether respondent is entitled to gratuity amount, if it is so the same shall be examined and disbursed within a period of three months from the date of receipt of this order.

14. Pending I.A(s), if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
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