

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5581 of 2020

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Prahlad Singh Son of Late Hardeep Singh, Resident of Village-Bairka, P.O.-
Bairka, P.S.-Atri, District-Gaya, present residing at Quarter no. 834, Ward No.
9, Mohalla-Vidyapuri, P.O. Jhumri Telaiya, P.S.-Telaiya, District-Kodarma
(Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Under Secretary, Education Department, Government of Bihar, Patna.
4. The Regional Deputy Director Education, Magadh Division, Gaya cum Enquiry Officer of Departmental Proceeding, Magadh Division, Gaya.
5. The District Program Officer, Education, Gaya cum Presenting Officer of Department Proceeding Gaya.
6. The District Education Officer, Gaya.
7. The Accountant General, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Helal Ahmad, Advocate
For the Respondent/s	:	Mr. Jitendra Kumar Roy 1, (SC 13)
		Mr. Hitesh Suman, AC to SC 13
For the AG, Bihar	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 22-04-2025

Heard Mr. Md. Helal Ahmad, learned counsel
appearing on behalf of the petitioner; Mr. Jitendra Kumar Roy 1,
learned SC13, along with Mr. Hitesh Suman, learned AC to SC



13 for the State and Mr. Bindhyachal Rai, learned counsel for the Accountant General, Bihar.

Re.: I.A. No. 01 of 2022

2. Learned counsel appearing on behalf of the petitioner by filing the present interlocutory application seeks amendment in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the present interlocutory application.

3. Having considered the information contained in the interlocutory application and the grounds mentioned therein and the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the interlocutory application.

4. I.A. No. 01 of 2022 is allowed.

Re.: C.W.J.C. No. 5581 of 2020

5. The petitioner, in paragraph no. 1 of the present writ petition, has sought, *inter alia*, the following relief(s), which is reproduced hereinafter:-

"1.That the application on behalf of the petitioner above named, is for issuance of writ in the nature of certiorari and/or any other appropriate writ/writs, order/orders direction (s), is for quashing of order issued under memo no. 2502 dated 21.11.2019 under the signature of Director Secondary Education Bihar, Patna Respondent No.2 whereby and whereunder as per order of Government a Punishment of deduction of 25 present from pension has been awarded against the petitioner on the basis of



experty inquiry report of respondent No.4 in Department Proceeding initiated against the petitioner after his retirement on 28.2.2018 from the post of Head Master of 10+2 G.S.M. Kanaya High School Jail Press Gaya and during pendency of this writ application stay the impugned order dated 21.11.2019 issued under Memo No.2502 under the signature of respondent No.2.”

Thereafter the petitioners filed I.A. No.1 of 2022 for modification of the prayer made in the writ application, *inter alia*, seeking following relief(s):

“1. That this interlocutory application on behalf of the petitioner above named, is for making additional prayer at paragraph no.1 of C.W.J.C no. 5581/2020, is for quashing of order dated 10.8.2021 issued under Memo no.1575 by Additional Chief Secretary Education Department, Patna, whereby and where under appeal filed by petitioner against the order dated 21.11.2019 issued under Memo. No. 2502 by the Director, Secondary Education has been affirmed without considering the fact that the impugned punishment of deduction of 25% of pension has been passed without proper departmental enquiry as required under Bihar C.C.A Rule 2005.”

6. The petitioner had retired on 28.02.2018 from the post of Headmaster, G.S.M. Girls High School, Jail Press, Gaya. On the basis of complaint petition filed before the Hon'ble Lokayukta, Bihar, an inquiry was conducted. Based on the inquiry report submitted by three men committee, a joint report was submitted against the petitioner and other employees of the said school. In compliance of the direction of the Hon'ble Lokayukta, the District Education Officer, *vide* letter no.1307 dated 02.07.2019, had drawn the allegations against the



petitioner and other teachers. The Departmental proceeding was initiated *vide* Memo no.1434 dated 15.07.2019 and charge-sheet was also served to the petitioner *vide* Memo No.135 dated 15.07.2019 and also against those who were involved in case. Inquiry report was submitted on 25.10.2019 and charges leveled against the petitioner were found to be proved. Petitioner was served second show cause on 28.10.2019 and the petitioner had filed a reply to the same on 11.11.2019, which was considered and the allegation against the petitioner was found to be proved. Inquiry Officer proposed major penalty of deduction of 25% of the pension amount. Based on the same, the disciplinary authority imposed penalty by imposing punishment of deduction of 25% of the pension amount *vide* Memo no.2502 dated 21.11.2019. One Gupteshwar Sharma, a retired Assistant Teacher was awarded the punishment of deduction of 40% of pension on the same charges. Aggrieved by the order passed by the Disciplinary Authority, the petitioner filed an appeal against the order contained in Memo No.2502 dated 21.11.2019 passed by the Disciplinary Authority, Director Secondary Education, Bihar and the same was rejected *vide* Memo no.1575 dated 10.08.2021 allegedly after giving opportunity of hearing to the petitioner.



7. Learned counsel submitted that the petitioner had retired on 28.02.2011 and he was not in service on the date of initiation Departmental Inquiry. The allegation is of the year 2015. The allegation that the students of the tagged school, whose names were registered in the college concerned for the academic year 2014-15 was against one Gupteshwar Sharma and only allegation against the petitioner, as would appear from the entire inquiry conducted, is that the petitioner, being the Headmaster of the School, had never reported the same to the competent authority. The action taken against the petitioner, after his retirement, in accordance with the Rule 43(b) of the Bihar Pension Rules, 1950, is also not well founded. He further submitted that in course of inquiry, the petitioner was not given any opportunity to file his written statement and to cross examine the witnesses, nor any charge-memo was ever served to the petitioner, during his period of service. Learned counsel in this background submitted that there is a gross violation of principal of natural justice, in so far as, imposing major penalty of deduction of 25% of the pension after the retirement of the petitioner. On these grounds learned counsel submitted that the order passed by the Disciplinary Authority contained in Memo No.2502 dated 21.11.2019 and the order passed by the Appellate



Authority contained in Memo No.1575 dated 10.08.202 are fit to be set-aside and quashed.

8. *Per contra*, learned counsel appearing on behalf of State submitted that a “Three Men Inquiry Committee” was constituted, who had found major irregularity, in so far as, functioning of the school by getting registered the students of the school for which the affiliation was awarded for academic year 2012-13. However, the petitioner allowed the registration of the students for the session year 2014-15 and that is a gross misconduct on the part of the petitioner and is enough for imposition of a major penalty against him. Learned counsel submitted that there has not been any irregularity in holding of the departmental inquiry and the same is in accordance with the law. The petitioner, though retired on 28.02.2018, was served a show cause notice before initiating Departmental inquiry against him. Action was taken, in accordance with Rule 139 of the Bihar Pension Rules, 1950. On the basis of material against the petitioner, all the charges too have been proved by the Enquiry Officer, which cannot be said that the inquiry was influenced by the “Three Men Committee’s” inquiry report, submitted before Hon’ble Lokayukta, in respect of irregularity committed by the petitioner. Petitioner has not been able to support of his claim



that the Departmental Inquiry has not been held in accordance with law and the Order impugned passed by the Disciplinary Authority, which has been affirmed by the Appellate Authority, cannot be interfered with. Learned counsel submitted that this Court can exercise power of judicial review only if there has been any misappropriation in taking disciplinary action against the petitioner or the impugned action is in gross violation of principal of natural justice. The petitioner, who has been found for registering the name of the students of Devendera Pathak Inter College, Gaya, which was tagged with High School Khurar, Gaya only for academic year 2012-13 by the competent authority but without getting the order of the competent authority, the petitioner was found involved in the matter of registration of the students of the aforesaid school for the academic year 2014-15, by way of authorizing one teacher namely Gupteshwar Sharma for the same. The petitioner was the Headmaster and he intentionally had not reported the competent authority about the illegal conduct of the Gupteshwar Sharma, a retired Assistant Teacher. Learned counsel in this background submitted that as per the provision of the Rule 139(b) of the Bihar Pension Rules, 1950, the order of penalty passed against the petitioner cannot be interfered with.



9. Heard the parties.

10. The petitioner, aggrieved by non payment of full pension, had preferred CWJC No.14539 of 2019 before this Court, against the action of the respondent/s, who had reduced 10% pension and 10% gratuity and this Court, allowing the said writ petition, had passed, *inter alia*, following direction petition;

“Considering the aforesaid, the writ application is disposed of with a direction to the respondents to provide copy of Memo of charge to the petitioner at the earliest preferably within a maximum period of 30 days from the date of receipt/production of a copy of this order so that the petitioner may file his reply to the Memo of charge (Prapatra- Ka) and thereafter the respondents should complete the proceedings in terms of Rule 43(b) of the Bihar Pension Rules at the earliest within a maximum period of four months from the date of service of Memo of charge (Prapatra- Ka).”

11. The record reveals that charge memo was issued on 15.07.2019, just a few days before the passing of the order dated 22.07.2019 in CWJC No.14539 of 2019. There is no reference of any information in respect of the fact, as to whether, a decision was taken to initiate Departmental Proceeding in accordance with Rule 43(b) of the Bihar pension rules, 1950 read with Rule 139 of the Bihar Pension Rules, 1950. The charge memo, which was issued to the petitioner, can only be said to be prepared during pendency of the writ petition. I have considered the charges contained in Prapatra ‘Ka’ and the



manner in which the inquiry has been conducted can only be said to be an empty formality. It has been admitted by the parties that the petitioner had filed his show cause and written statement but the Inquiry Officer has not recorded the reason, as to why, the stand of the petitioner has been rejected. The petitioner was not given an opportunity to cross examine the witnesses nor any evidence was provided to him holding the inquiry which is conducted by the Enquiry Officer in exercise of his quasi judicial power. In this regard, I find it apt to quote paragraph 10 of the judgment passed by the Apex Court in the case of **Roop Singh Negi vs Punjab National Bank & Ors.** reported in **2009 (2) SCC 570**, which, *inter alia*, is reproduced hereinafter:-

“10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According



to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

12. Based on the inquiry report, it is clear that enquiry is based on no evidence, which part has not been considered while issuing the second show cause to the petitioner, the Disciplinary Authority had not given his independent finding, in respect of the written statement filed by the petitioner, nor the Presenting Officer had examined the witnesses. The petitioner was not given due opportunity to furnish required documents and to cross examine the witnesses.

13. In view of the infirmities as noticed above and the impugned action in violation of principal of natural justice, the impugned order of penalty contained in Memo no. 2502 dated 21.11.2019, imposed upon the petitioner in so far as reducing 25% pension of the petitioner and the appellate order contained in Memo No.1575 dated 10.08.2021 cannot be sustained in the eye of law and the same are hereby set-aside and quashed.

14. The authority concerned is directed to take



corrective measures in accordance with law.

15. Accordingly the present writ petition is allowed.

16. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2025
Transmission Date	NA

