

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9932 of 2020

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Sagar, Son of Brijnandan Singh, Resident of village- Mahsaunni, P.S.
Surajgarha, District-Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Patna.
2. The Additional Chief Secretary, Education Department, Patna.
3. The District Magistrate-Cum-District Election Officer, Lakhisarai.
4. The Block Development Officer, Surajgarha, Lakhisarai.
5. The Panchayat Secretary-cum-Member Secretary, Panchayat Teacher, Employment Unit, Gram Panchayat Raj Urain, Surajgarha, Lakhisarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mritunjay Kumar, Advocate.
		Mr. Anant Kumar-I, Advocate.
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27.
		Mr. Umesh Narayan Dubey, AC to GP-27.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-04-2025

Heard Mr. Mritunjay Kumar, learned counsel along with Mr. Anant Kumar, learned counsel appearing on behalf of the petitioner and Mr. Prabhakar Jha, learned GP-27 along with Mr. Umesh Narayan Dubey, learned AC to GP-27 for the State.

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



reproduced hereinafter:-

“i. For issuance of an appropriate writ/s, order/s, Direction/s for quashing memo no. 07 dated 22.06.2020 issued by respondent no. 5 whereby under two increments of the petitioner has been with held with non cumulative effect in purported exercise of power under clause-VII of Bihar Panchayat Prarambhik Shikshak (Niyojan Evam Seva Shart) Rule 2006 in compliance of direction given by the respondent no. 3 vide his memo no. 247/Estb. dated 19.06.2020.

ii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents for quashing letter dated 247 dated 19.06.2020 issued by the District Magistrate whereby and under the Panchayat Employment Unit has been directed to Award punishment to the petitioner for his dereliction of his duty in parliamentary election 2019 when the petitioner was deputed as second polling officer in 168 Lakhisarai legislative constituency and was discharging his duty as such at Polling Centre No. 339 and 340 in middle school Ghonghasa.

iii. To pass such other order/orders as your Lordships may deem fit and proper in the facts and circumstances of this case.”

3. The brief facts of the case is that disciplinary action was initiated in the year 2019 against the petitioner who is Panchayat Teacher in accordance with Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 (hereinafter referred to as the ‘Rules 2012’) on the basis of the allegation that the petitioner was deputed as Second Polling Officer for polling booth No. 399, Middle School Gonghsa, North Part during the parliamentary election 2019 where he failed to perform his duty which was reported by the polling officer. An explanation was asked from the petitioner by the District Election Officer vide Letter No. 87 dated 30.04.2019 for alleged disgraceful act. The explanation



submitted by the petitioner was rejected vide Letter No. 92 dated 02.05.2019 and the Employment Unit was directed to take needful action in accordance with law. The Employment Unit of Gram Panchayat Raj, Urain in compliance vide Letter No. 11 dated 02.06.2019 put the petitioner under suspension by invoking power under Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules 2006'), but proceeded in accordance with Bihar CCA Rules, 2005 and later on the Employment Unit, Gram Panchayat Raj, Urain vide its Letter No. 04 dated 29.11.2019 revoked the suspension of the petitioner. The District Magistrate – respondent no.3 vide Letter No. 247/Estb dated 19.06.2020 directed the respondent no.5 for issuance of fresh Prapatra 'ka' to the petitioner in light of Rules, 2006. The District Education Officer issued fresh Prapatra 'ka' and finally vide Memo No. 7 dated 22.06.2020, penalty of withholding of two increments with non-cumulative effect was passed by the respondent no.5. Aggrieved by the said order, the petitioner has filed the present writ petition.

4. Learned counsel appearing on behalf of the petitioner submitted that the action taken by the District Magistrate as contained in Memo No. 247/Estb dated



19.06.2020 is not in accordance with law and pursuant to the said action, imposition of minor penalty of withholding of two increments with non-cumulative effect passed by the respondent no.5 contained in Memo No. 7 dated 22.06.2020 is also not in accordance with Rule 19 of the Bihar CCA Rules, 2005. Learned counsel further submitted that the Election Commission is a constitutional body and the Commission in C.A. No.5659 of 2007 had argued before the Hon'ble Supreme Court that the teachers would be put on electoral roll revision work on holidays, non-teaching days and non-teaching hours, whereas non-teaching staff be put on duty any time. On this, the Hon'ble Supreme Court has directed that all teaching staff shall be put on duty of roll revision and election works on Holidays and non-teaching days. The Apex Court had further directed that the teachers should not ordinarily be put on duty on teaching days and within teaching hours and non-teaching staff, however, may be put on such duty on any day and any time, if permissible in law.

5. *Per contra*, learned counsel appearing on behalf of the respondents submitted that the petitioner, who is a Panchayat teacher, was made 2nd polling officer for polling booth No. 399 Middle school Gonghsa, North part during the



Parliamentary Election 2019, wherein he failed to perform his duty as polling officer. A video clip regarding the same was made viral on social media establishing that the petitioner failed to perform his duty for which he was authorised. The District Election officer, Lakhaisarai asked an explanation from the petitioner vide Letter No. 87 dated 30.04.2019. On the same day, the petitioner submitted his explanation, admitting the fact that indecent and disgraceful act was committed by some voters, but he failed to inform the higher authorities about the said disgraceful act for the intention and reasons best known to him. The respondent No. 3 being dis-satisfied with the said reply issued Letter No. 92 dated 02.05.2019 to the Employment Unit of the concerned Panchayat/Block for needful action in accordance with law. In the light of letter No. 92 dated 02.05.2019, the Employment Unit of Gram Panchayat Raj, Urain vide his letter No. 11 dated 02.06.2019 suspended the petitioner invoking its power under Rules, 2006. Later on the Employment Unit of Gram Panchayat Raj, Urain vide its Letter No. 04 dated 29.11.2019 revoked suspension of petitioner. Thereafter, the respondent no.3 directed the respondent No. 5 to issue a fresh notice (Prapatra' Ka') as per the provision of Rules, 2006. The District Education Officer Lakhisarai also vide letter



No. 1350 dated 19.06.2020 directed the authority concerned to issue fresh prapatra 'Ka' in accordance with Rules. The respondent no. 5 after giving cautions and serious consideration to the facts and evidences finally issued the office order contained in Memo No.7 dated 22.06.2020, wherein increments of the petitioner were withheld with non-cumulative effect. Thus, the petitioner has failed to make out a case for any interference, as the penalty order imposed against him is in accordance with Rule 17 of the Rules, 2012.

6. Heard the parties.

7. Having heard the rival submissions made on behalf of the parties, for better appreciation of the case, the directives issued by the Election Commission of India vide Letter No. 23/2007/ERS dated 28.01.2008 in compliance of the order of the Hon'ble Supreme Court in CA No. 5659 of 2007 is reproduced hereinafter:

“1. Whenever teaching staff is put on duties on roll revision, the DEOs/EROs shall prescribe holidays and non teaching days and non teaching hours as duty period for this work. Such appointees may be asked to avoid teaching Days and teaching hours for undertaking the roll revision work. During revision whenever the teachers are appointed as designated officers to make various Forms (Form 6, 7 etc) available to the voters and to receive the Forms from the Voters the DEOs/EROs shall prescribe a specific time during non teaching hours for the purpose of providing and receiving such Forms. Preferably minimum of one hour time immediately after the closure of teaching hours can be earmarked for this purpose. Depending on the prevailing teaching hours, the DEOs/EROs shall issue specific instruction and bring the same in the knowledge of all



political parties and the public well in advance.

2. Wherever special campaign dates are prescribed during the revision period, such campaign shall invariably be held on holidays only.

3. When an intensive revision is to be ordered, the schedule for revision shall be revised keeping the availability of the holidays in mind. If the door to door verification has to be done on teaching days, such verification may be asked to be done after teaching hours and on holidays.

4. Whenever the teachers are used as Booth Level Officers for the purpose of door to door verification for finding out cases of photo mismatches on the photo roll etc. the same exercise shall be done during non teaching hours and on holidays.

5. Whenever needed, the period for enumeration work may be extended for this purpose so that the enumeration work is comes out without hampering the teaching hours.”

8. Before I proceed to discuss the facts of the case, I find it relevant to record that in compliance of the directives contained in Letter No. 23/2007/ERS dated 28.01.2008 issued by the Election Commission of India, I find that the Memo No. 7 dated 22.06.2020 issued by the respondent no.5, by which penalty of withholding of two increments with non-cumulative effect has been awarded to the petitioner on the direction of the District Magistrate – respondent no.3 contained in Letter No. 247/Estb dated 19.06.2020 is not in consonance with the directions contained in Letter dated 28.01.2008 issued by the Election Commission of India.

9. I find that in the order contained in Memo No.7 dated 22.06.202, no reference has been taken into account in respect of the duty assigned to the petitioner as a second polling



officer on polling booth No. 399, Middle School Gonghsa, North Part during the parliamentary election 2019 was on any other day, which was not working day. In want of any finding to that extent, the order contained in Memo No. 7 dated 22.06.2020 is not sustainable in the eye of law and the same is set aside and quashed.

10. Action is required to be taken in accordance with law by the appropriate authority.

11. The writ petition stands allowed.

(Purnendu Singh, J.)

mantreshwar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2025
Transmission Date	NA

