

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14729 of 2024

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Mithilesh Chandra Jha, son of Late Parmeshwar Jha, permanent address-
Village- Jhakhra, P.S.- Shambhuganj, District- Banka, presently residing at
Ward No. 16/18, Mohalla-Nayatola, P.S. and District- Banka.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Deputy Director, Secondary Education, Bihar, Patna.
4. The Regional Deputy Director of Education (R.D.D.E), Bhagalpur Pramandal, Bhagalpur.
5. The District Education Officer, Banka.
6. The District Programme Officer (Establishment), Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar, Advocate
For the Respondent/s : Mr. Government Advocate 11

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 01-09-2025

Heard the parties.

2. The challenge made in the present writ petition is the Memo No. 09/GAO 56/2014 1446 dated 29.07.2024 issued by the Director, Secondary Education, Bihar, Patna, whereby the District Education Officer has been directed to recover an amount of Rs.10,52,800/-, by adjusting Rs.5,99,800/- from the unutilized leave and the rest of Rs.4,53,000/- may be recovered



by issuing notice to the petitioner. The impugned order further inflicted punishment of deduction of 5% pension of the petitioner for five years.

3. The brief facts which led to filing of the writ petition are as follows:

(i) The petitioner was appointed as Assistant Teacher on 01.09.1983 and after serving for over 30 years superannuated as Incharge Headmaster of RMK High School, Banka on 31.01.2014. Immediately upon superannuation, the petitioner was served with Memo No. 624 dated 20.02.2014 containing a memo of charge alleging, *inter alia*, while discharging his duty as I/c Headmaster, he distributed Rs.10,52,000/- as scholarship amongst students, who were not entitled under the departmental instruction; further he provided incorrect information in respect of accepting joining of one Teacher in the school and lastly he paid the scholarship to one another student in place of *bonafide* one. Based upon the three charges, as afore noted, a proceeding was initiated under rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules, 1950'). The petitioner immediately submitted his explanation on 25.02.2014 to the imputation alleged in the memo of charge and denied all the allegations.



(ii) Notwithstanding the aforesaid fact, one another show cause notice was issued on 25.06.2015, under the signature of Director, Secondary Education directing the petitioner to submit his explanation for the same set of charges as contained in the memo dated 20.02.2014. The petitioner again submitted his detailed defence explanation. On being dissatisfied with the explanation, the Regional Deputy Director of Education, Bhagalpur has been made as Enquiry Officer whereas the District Programme Officer, Secondary Education, Banka as Presenting Officer. The petitioner on direction submitted his written defence in the enquiry. However, the Enquiry Officer did not find the explanation of the petitioner acceptable and returned the finding against the petitioner on being found the charge No. 1 fully proved and charge No. 3 partially proved. Based upon which the Director, Secondary Education, Bihar, Patna has inflicted punishment as contained in Memo No. 9 dated 29.07.2024, which is put under challenge.

(iii) It is also worth noting that soon after the retirement, the petitioner had also approached this Court in CWJC No. 18510 of 2014 for grant of his retiral benefits which came to be disposed of on 10.08.2017 directing the petitioner to await for the outcome of the departmental proceeding/enquiry.



When the petitioner waited for a long time for disposal of the disciplinary proceeding, on being found no final decision, he again approached before this Court in C.W.J.C. No. 8431 of 2019 which was heard and disposed of on 08.12.2023, directed the disciplinary authority to take a final decision within a period of three months. In the aforesaid premise, the impugned order came to be passed.

4. Mr. Neeraj Kumar, learned Advocate for the petitioner while assailing the impugned order has taken this Court through rule 43(b) of the Rules, 1950 and submitted that in absence of sanction of the State Government, initiation of a departmental proceeding under rule 43(b) of the Rules, 1950 is wholly without jurisdiction and, as such, the punishment inflicted upon the petitioner is itself vitiated. To support the aforesaid submission, reliance has been placed on a decision rendered by the Division Bench of this Court in ***LPA No. 1219 of 2023 [Kamini Kumari vs. The State of Bihar & Ors.]*** which came to be disposed of on 27.02.2024. Further reference has also been placed over the decisions of the co-ordinate Bench in ***Dr. A. A. Mallick & Anr. Vs. The State of Bihar & Ors. [2007 (3) PLJR 321]*** and in ***Uday Singh vs. The State of Bihar & Ors. [2017(1) PLJR 908]***



5. Mr. Kumar has further taken this Court through the impugned order of punishment as contained in Annexure-16 and submitted that from bare perusal of the impugned order, it clearly reflects complete non application of mind on the part of the disciplinary authority as he has explicitly taken note of the enquiry report submitted by the Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur as contained in letter No. 21 dated 09.02.2018, when the enquiry report which has been placed on record by filing counter affidavit clearly suggests that it is of dated 12.11.2018, and submitted before the respondent Director, Secondary Education, Government of Bihar under Letter No. 176 dated 12.11.2018. Though it was later on considered by the Disciplinary Authority but the petitioner has never been informed with respect to two enquiries at any point of time, which is also not at all permissible in the eyes of law.

6. He further submits that the explanation of the petitioner has not been taken into consideration while he categorically responded to the charge that none of the students, who had secured less than 75% attendance in the school, has been extended the benefit of scholarship. He also submitted the attendance register of the School for inspection, which clearly demonstrates that only those students, who have secured more



than 75% of attendance, they were given the financial benefits under the scholarship. The petitioner further explained that Md. Rauf Alam, a plus two (+2) teacher submitted his joining on 10.01.2014 but due to inadvertence, information with regard to his joining could not be given. He further clarified that admittedly on account of some overcrowding during extending scholarship, a mistake took place and a student having similar name has received the scholarship but subsequently money has been returned to the *bonafide* students. The Enquiry Officer as well as the Disciplinary authority, both of them failed to consider the materials plaed by the petitioner to support his defence explanation, either in inquiry and/of before inflicting punishment.

7. On the other hand, learned Advocate for the State refuting the aforesaid contention has submitted that the Regional Deputy Director of Education, who was duly appointed as Enquiry Officer, has given proper opportunity to the petitioner and after considering all his explanation has returned the finding of guilt based upon which the disciplinary authority has inflicted punishment. From the enquiry report it clearly appears that because of the misconduct of the petitioner, an amount of Rs.10,52,800/- has been disbursed amongst the undeserving



students and thereby loss has been caused to the public exchequer; hence he justified the order of recovery. He further submits that so far the contention of the petitioner with regard to sanction of the State for initiation of a departmental proceeding under rule 43(b) of the Rules, 1950 is concerned, the same is not mandatory and, as such, the impugned order does not require any interference.

8. This Court has heard the learned Advocate for the respective parties and also perused the materials available on record. Bare perusal of Rule 43(b) of the Rules, 1950, it clearly manifest that it is only the State Government who is empowered and reserve the right of withholding or withdrawing a pension or part of it, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, with a specific proviso that the proceeding shall not be instituted save and except with the sanction of the State Government.

9. The Court time and occasion underscored the necessity to obtain the sanction from the State Government before initiating a proceeding under Rule 43(b) of Rules, 1950.

10. The learned Division Bench of this Court in



L.P.A. No. 1219 of 2023 and other analogous cases (Kamini Kumari Vs. The State of Bihar & Ors.) has unequivocally observed that if proceedings are not instituted when the government servant is on duty, then it shall not be instituted without the sanction of the State Government. It is also provided that such inquiry shall be in respect of an event which took place not more than four years before the institution of such proceedings. Both these mandatory requirements, one of sanction, and the other, of an absolution for any incident prior to four years of the retirement, if not complied with, the entire proceeding shall be vulnerable to challenge. The learned Court further observed that in case no sanction was obtained from the Government it goes to the root of the proceeding initiated under Rule 43(b) of the Rules, 1950.

11. Similar view was taken by the Coordinate Bench of this Case in the case of **Dr. A. A. Mallick** (*supra*) where the Court has observed that Proviso to Rule 43(b) of the Rules, 1950 states that if departmental proceeding is not initiated while the government servant was on duty then it cannot be initiated firstly without sanction of the State Government. Identical view was also taken in the case of **Uday Singh** (*supra*) where the Court crystallized that it is only the State Government, who is



competent to pass order of forfeiture of pension under the provisions of Rule 43 of the Rules, 1950.

12. The specific contention of the petitioner that the subjected departmental proceeding has been initiated without the sanction of the State Government has not been refuted, inasmuch, as the impugned order inflicted by the Director, Secondary Education, Bihar, Patna does not suggest that any sanction has been taken by the State Government.

13. This Court also finds substance in the submission of the learned Advocate for the petitioner that at one hand the Director, Secondary Education, Bihar, Patna vide letter no. 1291 dated 28.04.2018 wrote to the Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur-cum-Enquiry Officer that the enquiry has not been conducted in proper way and only the formalities have been completed, hence a fresh report has been sought for, however, the impugned order on the contrary suggests that the Regional Deputy Director of Education, Bhagalpur Division, Bhagalpur-cum-Enquiry Officer vide its letter no.21 dated 09.02.2018 had already submitted his enquiry report on being found the charges partially proved. The impugned order also talk about one another enquiry report contained in letter No. 176 dated 12.12.2018, thus in such



circumstances, the order of punishment cannot be based upon two enquiry reports.

14. This Court is reminded that in a disciplinary proceeding it is not necessary for the disciplinary authority to deal with each and every ground raised by the delinquent officer in the representation against the proposed penalty and detailed reasons are not required to be recorded in the order imposing punishment, if he accepts the findings recorded by the Enquiry Officer as has been reinforced in various decisions including the decision rendered in ***Boloram Bordoloi v. Lakhimi Gaolia Bank [(2021) 3 SCC 806]***; and it has been crystallized that all that is required on the part of the disciplinary authority is that it should examine at least the evidence in the disciplinary proceeding and arrive at a reasoned conclusion that the material placed on record during the course of enquiry establishes the guilt of delinquent employee on the principles of preponderance of probabilities. [vide: ***Airports Authority of India vs. Pradip Kumar Banerjee (2025) 4 SCC 111***]

15. However, in the case in hand, the facts noted hereinabove is enough to show that there is no application of mind at the level of the disciplinary authority. Further there is no deliberation and discussion of the reply filed by the petitioner to



the second show-cause, as to why the same has not been found acceptable. Assigning reason before inflicting punishment is the facet of natural justice, ensuring the principles of fairness and to show that the decision is based on evidence. The disciplinary authority must consider the enquiry report and the employees response to it, providing its own reasoning for the final decision, not simply agreeing with the enquiry officer.

16. This Court also finds that recovery of the amount to the tune of Rs.10,52,500/- cannot be directed in a proceeding under Rule 43(b) of Rules, 1950, which only prescribes withholding or withdrawing a pension or part of it, in case 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 causing grave misconduct.

17. On all these counts, this Court finds substance in the writ petition. Accordingly, the impugned order, as contained in Memo No. 09/GAO 56/2014 1446 dated 29.07.2024 passed by the Director, Secondary Education, Bihar, Patna (Annexure-16 to the writ petition) is hereby set aside. The concerned respondent is directed to restore 5% of the pension and ensure payment of all the retiral benefits/arrears thereof within a period



of twelve weeks from the date of receipt/production of a copy of
this order.

18. The writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2025
Transmission Date	NA

