

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25731 of 2019

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Shyam Kishore Prasad Son of Late Ganauri Prasad Resident of Village and
P.O.- Ajnaura, Police Station- Noorsarai, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary Education Department, Govt. of Bihar.
3. The District Education Officer Nalanda.
4. The District Programme Officer (Establishment) Nalanda.
5. The Block Education Officer Bind, District- Nalanda.
6. The Accountant General Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binoy Kumar- Advocate Mr. Manoj Madhav- Advocate Mr. Pankaj Kumar- Advocate
For the State	:	Mr. Jitendra Kr. Roy 1 (SC-13) Mr. U. K. Singh- AC to SC-13
Accountant General Bihar:	:	Mr. Ram Kinker Choubey- Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 21-01-2025 1. Heard learned counsel for the petitioner, learned

SC-13 of the State and learned counsel appearing on behalf of the

Accountant General of Bihar.

2. The learned counsel for the petitioner submits that

the instant writ application has been filed seeking quashing the
order passed by the respondent District Education Officer, Nalanda
contained in memo no. 4893 dated 19.12.2017 (Annexure-4),
whereby the promotion granted to the petitioner vide memo no.
3607 dated 23.08.2009 in B.A. trained pay scale has been held to
be illegal and accordingly, the subsequent promotion on the post of



Headmaster is also held illegal. Further, for a direction upon the respondent authorities to fix the pension of the petitioner on the basis of his last pay drawn and, accordingly, to pay the arrear of pension and other pensionary benefits such as difference amount of gratuity, earned leave as would be payable based on the last pay drawn.

3. Learned counsel for the petitioner next submits that the petitioner was appointed as an Assistant Teacher in the year 1988 and he submitted his joining in Prathmik Vidyalaya Haripur on 06.02.1988, thereafter, the petitioner was granted Matric Trained Revised Pay scale by an order contained in memo no. 151 dated 16.01.1990 issued by the D.S.E., Nalanda w.e.f. 06.02.1988 i.e. from the date of joining the school in terms of the resolution no. 6022 dated 18.12.1989 issued by the Finance Department, Government of Bihar. It is submitted that thereafter, petitioner was granted Matric Trained Senior Pay Scale by memo no. 1942 dated 08.05.2006 w.e.f. 06.02.2000. Further, the petitioner was promoted in B.A. Trained Scale vide memo no. 3607 dated 23.08.2009 (Annexure-1) issued by the District Superintendent of Education, Nalanda as petitioner prior to his appointment as an Assistant Teacher was possessing the qualification of B.A. and M.A., hence, the District Promotion Committee in light of resolution no. 1715 dated 15.09.1981, letter



no. 1971 dated 18.06.1986 and letter no. 2043 dated 20.09.1986 had taken a decision to promote the petitioner to B.A. Trained Pay Scale which led to the issuance of Annexure-1.

4. It is submitted that the District Primary Teachers Promotion Committee took decision dated 23.07.2012 based on which the petitioner was granted pay scale of Headmaster and was, accordingly, posted as Headmaster vide memo no. 3820 dated 08.08.2012 (Annexure-2) issued by the D.S.E., Nalanda. It is next submitted that petitioner retired from service on 30.09.2016. It is submitted that the office of the Accountant General at the time of fixation of pension raised objection, as such, the petitioner moved before this Court by filing C.W.J.C. No. 4553 of 2017. It is submitted that while C.W.J.C. No. 4553 of 2017 was pending adjudication, the District Education Officer, Nalanda issued order dated 19.12.2017 (Annexure-4) whereby the promotion granted to the petitioner vide memo no. 3607 dated 23.08.2009 was held illegal on the ground that memo no. 3607 dated 23.08.2009 related to pension of Jagat Narain Prasad, a retired teacher of Upgraded Middle School, Neerpur, as such, the charge memo contained in memo no. 81 dated 10.01.2017 (Annexure-5) under Rule 43(B) of the Bihar Pension Rule was issued to the petitioner.

5. It is submitted that since the District Education Officer, Nalanda issued an order dated 19.12.2017, as such,



C.W.J.C. No. 4553 of 2017 was permitted to be withdrawn by an order dated 04.04.2019 (Annexure-3) with liberty to the petitioner to assail the order dated 19.12.2017 passed by the D.S.E., Nalanda.

6. Learned counsel submits that the Block Education Officer was appointed as Inquiry Officer and the District Programme Officer was appointed as conducting officer. The petitioner appeared before the Inquiry Officer and filed his detailed show cause dated 28.03.2017 (Annexure-6) denying the allegation as alleged in the charge memo dated 10.01.2017. It is submitted that from perusal of the charge memo, it would manifest that the charges were (i) memo no. 3607 dated 23.08.2009 issued by the D.S.E., Nalanda was not related to the promotion of the petitioner, as from the issuance register, it manifests that the memo no. 3607 dated 23.08.2009 was related to Indradeo Prasad Singh, a retired teacher, Middle School, Tungi. Learned counsel for the petitioner submits that from perusal of order dated 19.12.2017 (Annexure-4) issued by the DEO, it would manifest that the same recorded that memo no. 3607 dated 23.08.2009 was related to Jagat Narain Prasad Singh, a retired teacher of Upgraded Middle School, Neerpur, while the charge memo served on the petitioner recorded the name of Indradeo Prasad Singh, (ii) after getting promotion by illegal means, the government money was defalcated, as promotion order was not issued from the office of



the D.S.E., Nalanda and promotion was granted without convening the Promotion Committee as no record was found in the office and (iii) unbecoming of a government employee.

7. Learned counsel further submits that the charges were vague and stale as the date of promotion of the petitioner in B.A. Trained Scale Pay was issued on 23.08.2009 and the petitioner retired in the year 2016 and the charge memo under Section 43(B) of the Bihar Pension Rule was issued on 10.01.2017 i.e. nearly after more than seven years from the date when the petitioner was granted the aforesaid promotion. It is submitted that Rule 43(B) of the Bihar Pension Rule is very clear in its operation that a proceeding under Rule 43(B) of the Bihar Pension Rule can be initiated only with respect to an occurrence which has been committed within a period of four years after the date of retirement, but in the present case the charge memo has been issued after a delay of more than seven years.

8. It is further submitted that the petitioner in his reply denied the charges and the Inquiry Officer submitted his inquiry report contained in letter no. 113 dated 25.04.2017 (Annexure-7) wherein it was recorded that issuance of two memo no. 3607 dated 23.08.2009 under the signature of D.S.E. appears to be a mistake of the Clerk in the office of the D.S.E.. Further, the departmental proceeding was initiated eight years after the



promotion was granted to the petitioner which does not appear to be in accordance with law.

9. Learned counsel for the petitioner thus submits that the Inquiry Officer while submitting his report was conscious of the fact that the departmental proceeding has been initiated after eight years from the date of promotion granted to the petitioner under Rule 43(B) of the Bihar Pension Rule as such the same was not in accordance with law, but then, submits that all of a sudden the Inquiry Officer again submitted another inquiry report contained in letter no. 116 dated 02.05.2017 (Annexure-8), wherein it was recorded that earlier report contained in letter no. 113 dated 25.04.2017 (Annexure-7) is deleted for the reason assigned in the letter dated 02.05.2017.

10. Learned counsel submits that the second inquiry report was submitted by the Inquiry Officer to the D.P.O. when the Inquiry Officer had become *functus officio* after submitting his earlier inquiry report dated 25.04.2017 and thus, had no power to submit a second inquiry report when there was no order of any *de novo* inquiry.

11. It is further submitted that it was a procedural lapse on part of the Inquiry Officer to submit a second inquiry report which amply demonstrates that the Inquiry Officer being the Block Education Officer was under pressure of his superior to



submit a report to their liking for taking a decision against the petitioner. It is next submitted that the District Programme Officer also submitted his inquiry report contained in letter no. 515 dated 09.05.2017. It is submitted that it absolutely does not stand to reason that how two inquiry reports were submitted, one by the Inquiry Officer and another by the conducting officer, which further vitiates the entire proceeding.

12. Learned counsel next submits that based on the inquiry report, the D.E.O., Nalanda issued second show cause contained in letter no. 1921 dated 13.05.2017 (Annexure-10) asking the petitioner to submit his reply so that a decision is taken. Accordingly, the petitioner submitted his reply to the second show cause by his reply dated 28.07.2017 (Annexure-12), wherein he denied the charges, but the District Education Officer without appreciating the facts of the case in its correct perspective based on an erroneous inquiry report inflicted the petitioner with the aforesaid punishment as contained in memo no. 4893 dated 19.12.2017, which is impugned in the instant writ application.

13. The learned counsel appearing on behalf of the State submits that a counter-affidavit has been filed on behalf of respondent nos. 3 and 4. It is further submitted that the counter-affidavit does not reply the contention of the petitioner that two inquiry reports were submitted, one by the Inquiry Officer and



another by the D.P.O., nor the counter-affidavit records that under what circumstances the Inquiry Officer submitted two inquiry reports separately, nor the respondent authorities in the counter-affidavit are able to rebut the contention of the petitioner that the proceeding initiated under Rule- 43(B) of the Bihar Pension Rule was vitiated for the reason that it was with respect to an occurrence, which was committed more than seven years prior to the retirement of the petitioner, nor the counter affidavit gives any explanation that as to under which provision of law, the conducting officer submitted his separate enquiry report.

14. At this stage, the learned counsel appearing on behalf of the petitioner submits that petitioner was granted the promotion in B. A. Trained pay of scale on 23.08.2009 and the petitioner retired in the Year 2016 while the charge memo under Rule 43(B) of Bihar Pension Rule came to be served on the petitioner in the Year 2017.

15. The learned counsel for the State fairly submits that procedural lapses have been committed, as such, after setting aside the order impugned, the matter be remanded back to the authorities from the stage of the inquiry.

16. After hearing the learned counsel for the parties, the Court agrees with the submission made by the learned counsel for the petitioner that procedural lapses were committed



by the authorities while conducting the departmental proceeding against the petitioner, further, the learned counsel for the petitioner is right in his submission that it absolutely does not stand to reason that the D.E.O., Nalanda issued letter dated 19.12.2017, after the retirement of the petitioner cancelling his promotion granted in B.A. trained pay scale vide Memo No. 3607 dated 23.08.2009, on the ground that the Memo dated 23.08.2009 was related to pension of Jagat Narayan Prasad, a retired teacher of upgraded middle school, Neerpur, but when charge memo contained in Memo No. 81 dated 10.01.2017 was issued, the same recorded that Memo No.3607 dated 23.08.2009 was related to Indradeo Prasad Singh, a retired teacher, Middle School, Tungi, which amply demonstrates that the authorities were proceeding in haste against the petitioner from the beginning and as such the order dated 19.12.2017 issued by the D.E.O., Nalanda cancelling the promotion of the petitioner and the charge memo dated 10.01.2017 were dichotomic. The learned counsel for the petitioner has rightly argued that the departmental proceeding initiated against the petitioner under Rule-43(B) of the Bihar Pension Rule was contrary to the rules, as the promotion to the petitioner in B.A. trained scale of pay was granted in the year 2009, the petitioner retired in the Year 2016 and the charge memo came to be issued to the petitioner in the Year 2017, alleging that petitioner by



manipulating secured promotion in the year 2009, as such, the allegation with respect to which the departmental proceeding was initiated against the petitioner was not with respect to an allegation committed by the petitioner four years prior to his retirement, hence the enquiry officer being conscious of the law rightly submitted his first inquiry report dated 25.04.2017, wherein it was recorded that the departmental proceeding was initiated 8 years after the promotion was granted, which does not appear to be in accordance with law. The Court also finds merit in the submission of the learned counsel appearing on behalf of the petitioner that the inquiry officer could not have submitted his second inquiry report dated 02.05.2017 recording that earlier inquiry report dated 25.04.2017 stands deleted, when the inquiry officer after submitting his first inquiry report became *functus officio* and thus the second inquiry report could not have been submitted until a *denovo* inquiry was ordered. Further, the learned counsel correctly submits that the D.P.O. could not have submitted his inquiry report in breach of the law i.e. in the inquiry three inquiry reports were submitted, two reports by the inquiry officer and one by the District Programme Officer, which completely negates the procedure for holding a departmental proceeding. The Court also finds merit in the submission of the learned counsel for the petitioner that since procedural lapses were committed by the



authorities in holding the inquiry, as such, the same vitiated the second show-cause also, hence the impugned order in the instant writ petition is fit to be set aside.

17. After considering the submissions made by the learned counsel appearing on behalf of the petitioner, the writ application is allowed and the order passed by the respondent District Education Officer, Nalanda contained in memo no. 4893 dated 19.12.2017, whereby the promotion granted to the petitioner vide memo no. 3607 dated 23.08.2009 in B.A. trained pay scale has been held to be illegal and accordingly the subsequent promotion on the post of Headmaster is also held illegal is hereby quashed.

18. The writ application is allowed and the petitioner shall be entitled for all consequential benefits, as prayed in the instant writ application within a period of four months from the date of receipt/production of a copy of this order.

(Satyavrat Verma, J)

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