

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17495 of 2023

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Balak Ram Yadav son of Huleshwar Yadav, resident of Village-Koriyapatti
West, Post-Guria, P.S. Triveniganj, District-Supaul, PIN-852214.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The Regional Deputy Director of Education, Kosi Division, Saharsa.
5. The District Magistrate, Supaul.
6. The District Education Officer, Supaul.
7. The District Programme Officer (Establishment), Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar, Advocate
For the Respondent/s : Mr. Standing Counsel 23

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 03-01-2025

Heard learned counsels for the parties.

2. The present writ application has been filed on behalf of
the petitioner for the following reliefs:-

(i) For quashing of the order bearing memo no.739 dated 18.04.2022(Annexure-10) passed by respondent no.3 (the disciplinary authority) by which punishment of withholding two increment with cumulative effect and withholding salary for the suspension period (except the subsistence allowance already paid) was inflicted upon the petitioner though the enquiry officer in the departmental proceeding had not found the charges fully to be proved against the petitioner but the disciplinary authority without recording its



reasons for disagreement with the inquiry report and without recording its own finding on the charges as required under Rule 18(2) of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, has awarded the major punishment, however the Appellate Authority has reduced the major punishment into minor punishment by withholding on increment with non-cumulative effect, but the punishment of withholding salary for the suspension period (except the subsistence allowance already paid) awarded by the disciplinary authority has been upheld.

(ii) For quashing/setting aside the appellate order bearing memo no.1960 dated 18.08.2022 (Annexure-12) passed by respondent no.2, by which the punishment order bearing memo no.739 dated 18.04.2022 passed by respondent no.3(the disciplinary authority) has been reviewed and the punishment of withholding two increment with cumulative effect has been reduced to withholding one increment with non-cumulative effect whereas the punishment of withholding salary for the suspension period (except the subsistence allowance already paid) awarded by the disciplinary authority has been upheld.

(iii) For issuance of any other order of direction which this Court may deems fit and proper.

3. Learned counsel for the petitioner submitted that while the petitioner was posted as Assistant Teacher and Incharge Headmaster of the T.C. Higher Secondary School Chakla, Nirmali in Supaul, was place under the suspension in contemplation of departmental proceeding vide memo no.1514 dated 06.08.2021. A charge sheet bearing memo no.1515 dated



06.08.2021 was served upon the petitioner by the disciplinary authority wherein altogether five charges were framed against the petitioner. In the charge sheet allegation of theft of 54 bundles of copy of Maithili subjects from the evaluation centre was levelled against the petitioner.

4. It is further submitted that the charges against the petitioner is not found to be fully proved but by way of liability it is partially proved. The disciplinary authority vide office order bearing memo no.739 dated 18.04.2022 inflicted major punishment upon the petitioner by withholding two increments with cumulative effect and apart from that it was further decided that the salary for the suspension period shall not be paid to the petitioner except the subsistence allowance that was already paid.

5. It is further submitted that petitioner preferred an appeal before the Appellate Authority and the appellate authority after considering the memo of appeal passed the order vide office order no.1960 dated 18.08.2022 by which the punishment awarded by the disciplinary authority was modified to the extent that one increment with non-cumulative effect shall remain withheld, however the salary of the petitioner for the suspension period shall not be paid except the subsistence allowance that



was already paid.

6. Learned counsel for the petitioner relied upon the judgment passed by this Court in the case of ***Indu Prakash Sao v. The State of Bihar and Others Reported in 2013(3) PLJR 1*** in which it was held that a show cause is necessary to be given to the delinquent before imposing such punishment. Salary withheld for the period of suspension without prior notice is violative of Rule 97(3) of the Bihar Service Code, 1952.

Paragraph 8 of the judgment is quoted for ready reference:-

Coming to the other remaining claim of the petitioner for payment of full salary during his suspension, however, it would appear that no specific show cause for withholding payments other than subsistence allowance was given to the petitioner before passing of such order. It is well settled that for withholding any payment of the suspension period except subsistence allowance, a show cause is necessary to be given to the delinquent, as held by a Division Bench of this Court in the case of Sri Mahavir Prasad vs. The State of Bihar (1988 PLJR 82). To the same effect is the decision reported in 2008 (2) PLJR 56 (Kishori Lal vs. The State of Bihar & Ors.) holding that salary withheld for the period of suspension without prior notice is violative of Rule 97(3) of the Bihar Service Code, 1952.

In the above view of the matter, therefore, it is held that the petitioner is entitled to his salary for the period of



suspension and such period shall be deemed to be spent on duty, with all consequential benefits.

7. I have heard the parties. The State has already accepted that no notice was given to the petitioner regarding withholding of his salary during suspension period, as such, this writ application stands allowed.

8. However, the concerned authority is directed to pay the salary of the petitioner during the suspension period within a period of six weeks from the date of production/receipt of a copy of this order.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

