

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9400 of 2022

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Suresh Pandey, Son of Late Yadu Pandey, Resident of Sarvodaya Nagar, Ward No. 40, Begusarai, P.O., P.S. and District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
3. The Director, Secondary Education, Government of Bihar, Buddha Marg, Patna.
4. The Regional Deputy Director of Education, Munger Division, Munger.
5. The District Education Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate
	:	Mr. Prashant Kumar, Advocate
	:	Mr. Shyama Kant Singh, Advocate
For the Respondent/s	:	Mr. Amit Bhushan, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 18-06-2026

Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the order passed by the Additional Chief Secretary, Education Department, Government of Bihar, Patna vide Memo No. 887, Patna dated 29.04.2022 imposing the punishment of the deduction of 5% of his pension for 3 years affirming the order passed by the Director, Secondary Education, Government of Bihar under Memo No.180, Patna dated 02.02.2022 imposing punishment of deduction of 10% from pension for 3 years alleged to be exercise



of power under 43(B) of Bihar Pension Rules without proper appreciation of his reply furnished in response to second show-cause in addition to applicability of 43(B) of Bihar Pension Rules in light of law reflected from the said Rules as well as the law settled by temple of justice time without numbers by terminating the judicial proceeding and for other necessary relief/reliefs on the basis of the facts and circumstances of the case enumerated stated and discussed hereinafter.

FACTS OF THE CASE

3. The brief facts, which are required to be considered for proper adjudication of the present writ petition are that the petitioner while working as In-Charge Headmaster, High School, Ramdiri, Begusarai superannuated from services on 30.09.2018, after attaining the age of superannuation. Vide letter No. 186 dated 23.03.2018, issued under the signature of the Director, Secondary Education, Government of Bihar, Patna, which was written in reference to his letter No. 179 dated 21.03.2018 and letter No. 199 dated 23.03.2018 indicating therein that in the financial year 2016-17, as per the demands made by the Headmaster of the School in question, the funds were allotted and the same were withdrawn and sent to the account of the beneficiaries through RTGS. It was further mentioned that additional demands were not made by the



concerned Headmaster. Subsequently vide Memo No. 11 dated 02.01.2019, issued under the signature of the Director, Secondary Education, Government of Bihar, Patna, addressed to the District Education Officer, Begusarai, it was directed that in view of letter No. 186 dated 23.03.2018, whereby the reply to the question asked for by the Member of Legislative Assembly, namely, Narendra Kumar Singh @ Bogo Singh with regard to not granting the benefit to the students for the year 2016-17 in relation to Mukhyamantri Shatabdi Balika Poshak Yojana in the Government High School, Ramdiri, Begusarai, charges with regard to dereliction of duty is found to be prima facie proved against the Principal of the concerned school, therefore, appropriate charge be framed in terms of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 and the same be issued in Prapatra-K within one week. In compliance of the above mentioned direction, vide letter No. 2354 dated 29.09.2020, issued under the signature of the District Education Officer, Begusarai, addressed to the Director, Secondary Education, Government of Bihar, Patna, the memo of charge along with evidence was sent for his approval and for doing the necessary. The memo of charge contained the detail of charges levelled against the petitioner and



along with the memo of charge, some documents were referred, however list of witnesses were not given.

4. It is the case of the petitioner that no show cause notice was issued to the petitioner before initiation of the departmental proceeding. Vide letter No. 2046 dated 08.10.2021, issued under the signature of the Deputy Director, Secondary Education, Government of Bihar, Patna, the petitioner was directed to submit his reply to the second show cause notice within one week. Along with the letter dated 08.10.2021, copy of the enquiry report was also provided to the petitioner. In compliance of the letter dated 08.10.2021, the petitioner submitted his reply on 23.11.2021, wherein he denied all the charges levelled against him and requested the disciplinary authority to exonerate him from the charges levelled against him.

5. It is further case of the petitioner that from the entire documents i.e. the memo of charge, the enquiry report etc, it would not transpire that the proceeding against the petitioner was initiated under Rule 43 (B) of the Bihar Pension Rules. The disciplinary authority i.e. the Director, Secondary Education, Government of Bihar, Patna by the impugned order contained in memo No. 180 dated 02.02.2022, while referring to the enquiry report and the reply submitted by the petitioner, proceeded to



reject the reply submitted by the petitioner and imposed the penalty of deduction of 10% of the pension for three years. Being aggrieved with the order of punishment dated 02.02.2022, the petitioner was constrained to file an appeal before the Additional Chief Secretary, Department of Education, Government of Bihar, Patna, wherein he gave all the details with regard to the charge levelled against him and requested the appellate authority to exonerate him from the charges levelled against him. The appellate authority i.e. the Additional Chief Secretary, Department of Education, Government of Bihar, Patna vide his order contained in memo No. 887 dated 29.04.2022 modified the order of punishment passed vide letter dated 02.02.2022, to the effect that instead of 10%, he directed for deduction of 5% pension of the petitioner for three years. The petitioner, being aggrieved with the order dated 29.04.2022 passed by the appellate authority, has preferred the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER

6. The learned counsel for the petitioner submits that during the entire service period, no allegation was levelled against the petitioner and even, no show cause or explanation was asked for from the petitioner with regard to negligence in performing his duties. He submits that all of a sudden, the petitioner was handed



over the memo of charge, wherein certain charges were levelled against him, however no show cause notice was ever issued to the petitioner, prior to initiation of the departmental proceeding against him. He submits that from the memo of charge, it would not transpire that the proceeding against the petitioner has been initiated under Rule 43(B) of the Bihar Pension Rules.

7. The learned counsel for the petitioner submits that in terms of Rule 43(B) of the Bihar Pension Rules, the punishment can be awarded in case the State Government comes to the conclusion that the employee concerned was found to be guilty of grave misconduct in a departmental proceeding or comes to the conclusion that the employee concerned has caused pecuniary loss to the Government by misconduct/negligence, caused during his service period. In case of the petitioner, there is no allegation of causing any pecuniary loss to the State Exchequer and since, there is no allegation of causing pecuniary loss to the Government by misconduct or negligence during the service period, there was no occasion to initiate departmental proceeding under Rule 43(B) of the Bihar Pension Rules.

8. The learned counsel for the petitioner finally submits that since the petitioner was never granted any opportunity to file reply to the show cause, since no show cause notice was ever



issued to the petitioner, before initiation of the departmental proceeding, the entire departmental proceeding is a farce.

SUBMISSION ON BEHALF OF THE RESPONDENTS

9. Per contra, the learned counsel appearing on behalf of the State submits that a question was raised on the floor of the Bihar Legislative Assembly with regard to non-distribution of money related to the Chief Minister Cycle and Dress Programme for the financial year 2016-17 for High School, Ramdiri, Begusarai. On receipt of the said complaint/question, a report was called for and was received from the office of the District Education Officer, Begusarai vide letter No. 186 dated 23.03.2018, in which it was stated that since no requisition was made by the Headmaster of the concerned school for release of extra amount, the same was not released and distributed amongst the students. On the basis of the said report, a departmental proceeding was initiated against the petitioner by issuance of memo of charge. The Regional Deputy Director of Education, Munger Division, Munger was appointed as the enquiry officer and he submitted his report, after conducting a detailed enquiry vide his letter No. 167 dated 04.08.2021. The enquiry officer on the basis of the documents brought on record by the presenting officer, came to the conclusion that all the three charges levelled against the petitioner have been



found to be proved. Second show cause notice was issued to the petitioner vide letter No. 1656 dated 19.08.2021, which was replied by the petitioner on 23.11.2021. The disciplinary authority after duly examining the reply submitted by the petitioner, by the impugned order dated 02.02.2022, proceeded to award the penalty of deduction of 10% of the pension of the petitioner for three years, in terms of Rule 43(B) of the Bihar Pension Rule. The petitioner preferred appeal before the Additional Chief Secretary and the Additional Chief Secretary vide his order contained in Memo No. 887 dated 29.04.2022, proceeded to modify the punishment awarded to the petitioner by the disciplinary authority on 02.02.2022, by directing for deduction of 5% of the pension of the petitioner for three years.

10. He submits that in terms of the order dated 15.04.2026 passed in this case, a supplementary counter affidavit has been filed on behalf of the respondent no.3, wherein it has been stated that the petitioner never asked for any additional allocation for disbursement among the deprived girls under the scheme for the financial year 2016-17 and a question was raised in the Bihar Legislative Assembly. An enquiry was conducted, wherein the allegations levelled against the petitioner were found to be proved and based on the same, memo of charge was issued to



the petitioner. The proceeding was initiated against the petitioner under Rule 43(B) of the Bihar Pension Rules and opportunity was granted to the petitioner to file his second show cause reply, to the enquiry report submitted by the enquiry officer, whereby the charges levelled against the petitioner were found to be proved and since, there is a specific finding against the petitioner that there was deliberate delay in disbursement of the money to the beneficiaries, under the scheme and due to that, total 40 beneficiaries were deprived of the benefits, therefore, he was awarded the punishment.

11. The learned counsel for the State submits that proviso (III) to Rule 43 (B) of the Bihar Pension Rules stipulates that 'shall be directed by such authority and at such place or places as State Government may direct and in accordance with the procedure applicable to proceeding on which, an order of dismissal from service may be made'. He submits that the departmental proceeding was conducted in terms of Rule 43(B) of the Bihar Pension Rules and Rule 17 of the Bihar CCA Rules, 2005 and there is no procedural laches on behalf of the department in conducting the entire departmental proceeding. He further submits that the conduct of the petitioner comes under the ambit of misconduct, therefore, the order of punishment for forfeiture of



10% of pension of the petitioner for three years was passed, however the same was subsequently modified to 5% forfeiture of pension for three years.

CASE LAW RELIED UPON BY THE PETITIONER

12. The learned counsel for the petitioner refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in ***(1998) 7 SCC 84 (Punjab National Bank & Ors. versus Kunj Behari Misra)***, wherein in paragraph nos. 18 & 19, it has been held as follows:-

“18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous



that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] .

- 19.** *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority*



which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

13. The learned counsel for the petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **(2009) 2 SCC 570 (Roop Singh Negi versus Punjab National Bank & Ors.)**, wherein in paragraph nos. 14 & 23, it has been held as follows:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

14. The learned counsel for the petitioner further refers to and relies upon a judgment of the Hon’ble Supreme Court of



India reported in **(2010) 2 SCC 772 (State of Uttar Pradesh & Ors. versus Saroj Kumar Sinha)**, wherein in paragraph no. 28, it has been held as follows:-

“28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

15. The learned counsel for the petitioner further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **2026 (3) PLJR 125 SC (Jai Prakash Saini versus Managing Director, U.P. Cooperative Federation Ltd. & Ors.)**, wherein in paragraph nos. 17 & 18, it has been held as follows:-

“17. From the decisions of this Court in Sur Enamel (supra) and Kharak Singh



(supra), followed in Chamoli District Cooperative (supra), which deals with similar service rules as are applicable here, it is now settled that unless the charged employee accepts his guilt in clear terms, an enquiry on the charges drawn against him would have to be held. In the enquiry, the employer/department would have to take steps first to lead evidence against the workmen/delinquent charged and give an opportunity to him to cross examine those witnesses. Only thereafter, the workmen/delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence led against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove those documents and when so examined, the witness would have to be tendered for cross-examination.

- 18.** *In the instant case, we find that the department had not produced any witness in the enquiry even though the charges levelled upon the appellant were denied by him. Therefore, in our view, the enquiry stood vitiated. Once the enquiry stood vitiated, the consequential order of punishment/recovery cannot be sustained. We therefore allow this appeal. The*



impugned judgment and order of the High Court is set aside. The writ petition of the appellant stands allowed to the extent indicated below. The order of dismissal and consequential recovery is set aside. The Federation is, however, at liberty to hold a de novo enquiry, if it so desires, within a period of six months from the date of this order. If the Federation does not hold de novo enquiry as permitted above, the appellant shall be entitled to reinstatement with benefit of continuity in service including arrears of salary after adjusting suspension allowance, if any, paid already. In case the Federation chooses to hold an enquiry, it shall reinstate the appellant and place him under suspension till completion of the enquiry and during this period pay suspension allowance as may be payable in accordance with law. In case de novo enquiry is held, other service benefits including arrears of salary as well as benefits of continuity in service shall depend on the outcome of the enquiry.”

ANALYSIS AND CONSIDERATION

16. Having considered the rival submissions and after going through the records, it appears that admittedly the petitioner superannuated from service on attaining the age of superannuation on 30.09.2018 and till that time, no proceeding was pending against the petitioner and the petitioner was not served with any



show cause notice or he was never asked to give explanation to any complaint. Later on, after his retirement, the proceeding under Rule 43(B) of the Bihar Pension Rule is said to have been initiated against him for which, memo of charge was served to him. Prior to issuance of said memo of charge, no show cause notice was admittedly issued to the petitioner. The enquiry officer is said to have considered the explanation, which was submitted by the petitioner and after considering the explanation submitted by the petitioner and relying upon the documents, which were produced by the presenting officer as well as the on the statement made by him, proceeded to prove the charges levelled against the petitioner. After submission of the enquiry report, the petitioner was issued second show cause notice, which he duly replied, however the disciplinary authority without even giving reason to reject the reply submitted by the petitioner, went on to record that the reply submitted by the petitioner is not found to be satisfactory, proceeded to award punishment against him. Even the appeal preferred by the petitioner was rejected, however the order passed by the disciplinary authority dated 02.02.2022 was modified to the extent that the appellate authority directed for forfeiture of 5% of pension of the petitioner for three years. It appears that while conducting the proceeding in terms of Rule 43(B) of the Bihar



Pension Rules and Rule 17 of the Bihar CCA Rules, 2005, the procedure prescribed under the same was not followed by the disciplinary authority in as much as in terms of Rule 17(3), no list of witnesses were provided to the petitioner along with the memo of charge. When no details of witnesses were given, along with the memo of charge, there is no question of producing any witness during the course of enquiry, before the enquiry officer and even the documents, which are said to have been relied upon by the enquiry officer, were never proved by their respective authors. The petitioner was denied an opportunity to cross-examine the witnesses and to give/adduce witnesses in his favour, which also appears to be in violation of Rules 17(14) of the Bihar CCA Rules, 2005. It further appears that the disciplinary authority, while proceeding with the impugned order of punishment, did not utter a word with regard to consideration of the reply filed by the petitioner in his defence and in a mechanical manner, proceeded to reject the same by holding that the same is found to be not satisfactory. The enquiry officer only on the basis of the statement made by the presenting officer, in absence of any witness, proceeded to prove the charges against the petitioner on his own. It is the mandate of law, which has been held by the Hon'ble Supreme Court of India in the case of *Jai Prakash Saini (supra)*



that unless the charged employee accept his guilt in clear terms, an enquiry on the charges drawn against him would have to be held and in the enquiry, the employer/department would have to take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine those witness. Only thereafter, the workman/delinquent shall be asked whether he wants to lead any evidence and/or submit an explanation about the evidence lead against him. Even in a case based solely on documentary evidence, unless the relied upon documents are admitted by the charged employee, a witness would have to be examined to prove these documents and when so examined, the witness would have to be tendered for cross-examine. In the present case, no such procedure has been adopted and only on the basis of the documents presented by the presenting officer, the enquiry officer found the petitioner guilty and found the charges to be proved against the petitioner.

17. Considering the above, this Court is of the considered opinion that the entire departmental proceeding conducted against the petitioner was in clear violation of the provisions contained in Bihar CCA Rules, 2005 and the impugned order of punishment contained in Memo No. 180 dated 02.02.2022 and Memo No. 887 dated 29.04.2022, issued under the signature



of the Director (Secondary Education), Government of Bihar, Patna and the Additional Chief Secretary, Department of Education, Government of Bihar, Patna respectively deserves to be set aside and are accordingly set aside.

18. Since, the petitioner has retired prior to issuance of the departmental proceeding and the departmental proceeding was not conducted in terms of the provisions contained in Bihar CCA Rules, 2005. The High Court under Article 226/227 of the Constitution of India is entitled to interfere when the finding of fact is based on no evidence and if in every case where no valid evidence is laid at the enquiry proceeding, there is a remand made, it would be offering a premium to the negligence of the management/disciplinary authority and condoning the levity with which the departmental enquiry was conducted. It is the disciplinary authority, who appoints the Enquiry Officer and the Presenting Officer and it is expected that the Presenting Officer would be well versed in the procedures and also be informed in the manner in which evidence has to be laid before the Enquiry Officer, to prove the misconduct, alleged against a delinquent employee. In a disciplinary enquiry proceeding, it is also the trite principle that the standard of proof is preponderance of probability as distinguished from proof beyond reasonable doubt, as would be



required in a criminal prosecution. However, if there is no evidence laid at the enquiry, there is no question of any preponderance of probability being drawn to find the allegations proved nor can the delinquent be penalised on the basis of peremptory finding without any valid evidence. The disciplinary authority had an opportunity in a properly constituted enquiry proceeding and if in such a proceeding no evidence was laid, the punishment of dismissal has to be found to be imposed on no valid evidence.

19. Accordingly, the petitioner is found entitled for payment of his entire pension, for which he was entitled, prior to passing of the impugned orders dated 02.02.2022 and 29.04.2022 respectively.

20. The respondent authorities are directed to recalculate the entitlement of the petitioner, for which he was entitled to before passing of the order dated 02.02.2022 and to calculate the entire amount and make payment of the same to the petitioner within a period of four months from the date of receipt/production of the copy of the order.

21. The writ petition is allowed in the aforementioned terms.



22. Pending application, if any, shall also stands disposed of.

(Ritesh Kumar, J)

AjayMishra/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	23.06.2026
Transmission Date	NA

