

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13078 of 2023

Amrendra Kumar Mishra Son of late Birendra Kumar Mishra, Resident of House No. 2259, Sector-8A. Street No.-11, Bokaro Steel City, Bokaro, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director (Administration)-cum-Additional Secretary, Education Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vaidehi Raman Prasad Singh, Advocate
For the Respondent/s : Mr. Kameshwar Kumar, GP-17

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 23-06-2026

Heard Mr. Vaidehi Raman Prasad Singh, learned counsel for the petitioner and Mr. Kameshwar Kumar, learned Government Pleader for the respondents.

2. The petitioner has filed the instant application for the following reliefs:

“i. For grant of an appropriate writ for quashing the Notification under Memo No.428 dated 20.9.2021 issued under the signature of the Director (Administration)-cum-Additional Secretary, Education Department,



Government of Bihar withholding 50% of pension admissible to the petitioner under Rule 43(b) of Bihar Pension Rules, 1950 on the ground that there was a grave administrative failure on the part of the petitioner which had resulted in illegal withdrawal of huge government money (Annexure-6).

ii. For grant of an appropriate writ for quashing the Letter No.346 dated 11.7.2023 of the Director (Administration)-cum-Additional Secretary, Education Department informing the petitioner that no appeal is admissible against the order of the Government under the provision of Bihar Civil Servants (Classification, Control and Appeal) Rules, 2005 and as such the appeal filed by him is not maintainable (Annexure-8).

iii. For grant of an appropriate writ for a direction to the respondents to exonerate the petitioner from the charges leveled against him and to make order for grant of full pension to the petitioner with consequential benefits.”

3. The case of the petitioner in brief is that at the



relevant time when the petitioner was posted as District Programme Officer, Planning and Accounts, Saran, Chapra, he received information about a cheque for Rs.9,56,500/- having been presented to the bank for withdrawal. On reaching the bank and obtaining the details, it transpired that between 14.8.2012 and 4.10.2012 using forged signature of the petitioner, a sum of Rs.54,55,800/- had been withdrawn from the bank. The petitioner got an FIR being Bhagwan Bazar P.S. Case no.193 of 2012 registered in the jurisdictional police station.

4. By order dated 28.11.2012, the petitioner was placed under suspension in contemplation of a disciplinary proceeding. A departmental proceeding was initiated against him with the service of the memo of charge on 28.11.2012.

5. The petitioner was asked to submit his reply which he filed on 19.6.2015.

6. The Conducting Officer submitted the enquiry report on 27.7.2015 finding charge nos.1 and 2 not to have been proved while charge no.3 was found to be proved.

7. The petitioner was served with a copy of the enquiry report with a direction to file his response thereto which he filed on 5.12.2015.



8. The respondents came out with the order of punishment contained in memo no.428 dated 20.9.2021 issued under the signature of the Director (Administration)-cum-Additional Secretary, Education Department, Government of Bihar imposing the punishment of permanent deduction of 50% of the petitioner's pension under Rule 43(b) of the Bihar Pension Rules, 1950.

9. The petitioner filed an appeal before the Additional Chief Secretary, Education Department, Bihar, however he was communicated with letter dated 11.7.2023 of the Director (Administration)-cum-Additional Secretary, Education Department that appeal is not maintainable against the order of punishment, though a review application can be filed.

10. By way of the instant writ application, the petitioner has challenged the order of punishment dated 20.9.2021 deducting 50% of the petitioner's pension under Rule 43(b) of the Bihar Pension Rules, 1950 as also the letter dated 11.7.2023 communicating to the petitioner that the appeal filed by him is not maintainable.

11. It is submitted by learned counsel for the petitioner that he was not given opportunity to examine



witnesses in his defence, the Conducting Officer found the petitioner guilty of the charge not framed against him, he was not given second show cause notice against the proposed punishment and the Disciplinary Officer has passed the impugned order without considering the defence of the petitioner. Learned counsel for the petitioner further submits that no witness having been examined by the respondents nor any document exhibited or proved in support of the charges levelled against the petitioner, this is a case of no evidence against the petitioner. Reliance has been placed by learned counsel for the petitioner on the judgment in the case of ***Roop Singh Negi vs. Punjab National Bank & Ors.; (2009) 2 SCC 570.***

12. The application is opposed by learned counsel appearing for the respondents. It is submitted that though the proceedings was started against the petitioner under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 ('CCA Rules' in short), the petitioner having superannuated from service during pendency of the proceedings on 31.10.2019, the proceedings were converted into one under Rule 43(b) of the Bihar Pension Rules. The petitioner was given opportunity at each stage of the proceedings and in the enquiry



conducted, the Conducting Officer found charge no.3 to be proved against the petitioner. Enclosing a copy of the enquiry report dated 27.7.2015, the petitioner was asked to submit his response thereto which he filed on 5.12.2015 requesting that he be completely exonerated. Thereafter taking into consideration the material on record including the memo of charge, the reply filed by the petitioner, the enquiry report submitted by the Conducting Officer, the contents of the second show cause notice and the reply thereto filed by the petitioner, the order of punishment dated 20.9.2021 was passed against the petitioner which is impugned herein. It was finally submitted that the order of punishment having been passed by the Government (on the orders of the Governor, Bihar) no appeal against the same was maintainable under the CCA Rules. The petitioner not having been able to show any illegality or irregularity in the conduct of the proceedings, the writ application be dismissed.

13. Heard learned counsel for the parties and perused the material on record.

14. The relevant facts in brief are that on the petitioner having received information about a cheque for Rs.9,56,500/- having been received for payment in the bank, the petitioner reached the bank and made enquiries. The payment



was stopped. On enquiry, it transpired that a total sum of Rs.54,55,800/- was withdrawn from the bank between 14.8.2012 and 4.10.2012 by different persons including some fake persons using forged signature of the petitioner.

15. The petitioner accordingly lodged an FIR which was registered as Bhagwan Bazar P.S. Case no.193 of 2012 on 6.10.2012 under sections 420, 467, 468, 471 and 120B of the Indian Penal Code.

16. The petitioner was thereafter placed under suspension in contemplation of a departmental proceeding which was initiated with the service of the memo of charge on the petitioner on 28.11.2012.

17. The three charges against the petitioner was:

(i) Up to date cash register relating to projects were not presented on demand for its critical study,

(ii) Report relating to projects were not produced for its critical study, and

(iii) Illegal withdrawals were made from bank account no.106510400003651 relating to accounts and planning of District Education Programme Officer which showed his wrong intention.

18. The petitioner submitted his reply to the memo



of charge and the proceedings started wherein the Conducting Officer submitted his enquiry report dated 27.7.2015. As per the report, while charge nos.1 and 2 were not found to have been proved, charge no.3 was found to be proved.

19. A perusal of the enquiry report, a copy of which has been brought on record as Annexure-4 to the writ application would show that there is no mention therein of any witness having been examined in support of the charges against the petitioner. Though by way of documentary evidence with respect to charge no.3, there is mention of letter no.818 dated 12.10.2012 of the Regional Deputy Director of Education, Saran Division, Chapra, however it is not in dispute that no witness having been examined, neither the said letter nor the contents thereof has been proved in course of the departmental proceeding.

20. On further perusal of the reasoning/opinion given by the Enquiry Officer with respect to charge no.3, it transpires that the Enquiry Officer notes that no strong evidence has been produced by the Presenting Officer showing the intention or involvement of the petitioner in the illegal withdrawal. However as the withdrawals have taken place by cheques, the Conducting Officer concludes that the petitioner



miserably failed in financial management as a result of which the Government suffered financial loss and thus the charge no.3 is proved.

21. At this stage itself, it would be relevant to observe that the Hon'ble Supreme Court in its judgment in the case of **Roop Singh Negi** (supra) 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.”

22. A Division Bench of this Court in the case of **Devendra Prasad vs. The State of Bihar and Ors.** (judgment dated 19.10.2023 passed in L.P.A. no. 1302 of 2017), following Roop Singh Negi (supra) observed as follows:

“7. As has been held in Roop Singh Negi v. Punjab National Bank and others; (2009) 2 SCC 570, the documents produced in a departmental inquiry has to be proved by examining witnesses. Even an F.I.R. was held to be not evidence by itself without actual proof of facts stated therein. The Hon’ble Supreme Court had also held that even an admission or confession to the police itself is not sufficient to find the delinquent employee guilty in a departmental proceeding if no evidence is brought on record to prove the offence or misconduct alleged. Departmental inquiry was held to be a quasi-judicial proceeding and the Inquiry Officer functions in the status of a quasi-judicial authority. Not only should evidence be led in a departmental inquiry, the conclusions arrived at should be based on



evidence which brings forth a probability that the delinquent has committed the misconduct alleged and charged against him. No Inquiry Report based on conjectures and surmises can be sustained and even in a departmental inquiry, the standard of proof is not a mere suspicion. However high the degree of suspicion is, it cannot be a substitute for legal proof.”

23. Taking into consideration the facts and circumstances of the case, no witness having been examined on behalf of the respondents in course of the enquiry in the departmental proceeding, it is a case of no evidence against the petitioner. Further on perusal of the conclusion of the enquiry report where the finding with respect to charge no.3 having been proved is given, it transpires that the Conducting Officer himself observes that in course of enquiry the Presenting Officer did not produce any evidence of the petitioner having any ill intention or being involved directly or indirectly in the withdrawal of any amount.

24. In the above circumstances, the Conducting Officer seriously erred in coming to the conclusion that charge no.3 was proved against the petitioner.



25. In view of the facts and circumstances of the case, from the contents of the enquiry report, the Court has no hesitation in holding that it is a case of no evidence against the petitioner. As such, the order of punishment dated 20.9.2021 (Annexure-6) issued under Rule 43(b) of the Bihar Pension Rules permanently deducting 50% of the petitioner’s pension is not sustainable.

26. In the facts and circumstances of the case, the order/notification of punishment contained in Memo no.428 dated 20.9.2021 issued on the orders of the Governor, Bihar under the signature of the Director (Administration)-cum-Additional Secretary, Education Department, Government of Bihar being unsustainable is hereby quashed and set aside.

27. The writ application is allowed.

28. Any pension deducted consequent to the order of the punishment passed, impugned herein, shall be paid to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

(Partha Sarthy, J)

saauravkrsinha/-

AFR/NAFR	NAFR
CAV DATE	14.5.2026
Uploading Date	23.6.2026
Transmission Date	NA

