
(2022) 06 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3758, 5126 Of 2009

Mina Kumari Sah

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 06-06-2022

Acts Referred:

Citation : (2022) 06 JH CK 0013

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Din Dayal Saha, Rakesh Kumar Roy, Jayant Franklin Toppo

Final Decision : Partly Allowed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Din Dayal Saha, learned counsel appearing on behalf of the petitioner.

2. W.P.(S) No. 3758 of 2009 has been filed for the following reliefs:

"1. That, this writ application is being filed for issuance of an appropriate writ/writs, order/orders, direction/directions or a writ in the nature of certiorari for quashing the order dated 16.07.2009 (Annexure-9) in Misc. Case No. 05/08-09 passed by the Respondent Deputy Commissioner, Sahibganj whereby he has wrongly been directed the respondent The District Superintendent of Education, Sahibganj to frame a charge and initiate departmental proceeding against the petitioner for her illegal appointment as Assistant teacher and also directed to consider the appointment of the Respondent No. 6 as Assistant teacher in accordance with law though the learned Deputy Commissioner, Sahibganj has got no jurisdiction and power to pass such an arbitrary order which is wholly illegal, unconstitutional and perverse and be further pleased to direct the respondents not to disturb the service of the petitioner as she served the department for last 22 years on being proper verification of her entire certificates time to time."

3. W.P.(S) No. 5126 of 2009 has been filed for the following reliefs:

"1. That, this writ application is being filed for issuance of an appropriate writ/ writs, order/orders, direction/directions or a writ in the nature of certiorari for quashing the order dated 29.09.2009 vide Memo No. 1359 by which the respondent District Superintendent of Education, Sahibganj has cancelled the appointment of the petitioner with immediate effect and terminated from service and also directed to issue appointment letter to Respondent No. 6, which is wholly illegal, arbitrary and without application of judicious mind and without giving any show cause notice or opportunity to the petitioner where the petitioner served the department for last 22 years on being proper verification of her entire certificate time to time."

Arguments of the petitioner in W.P.(S) No. 3758 of 2009

4. Learned counsel for the petitioner submits that the impugned order dated 16.07.2009 has been passed pursuant to order passed in W.P.(S) No. 573 of 2006 dated 01.05.2008 read with order in Contempt Case (Civil) No. 438 of 2008 dated 21.04.2009.

5. The learned counsel has submitted that in this proceeding, the order dated 16.07.2009 (Annexure- 9) passed in Miscellaneous Case No. 5 of 2008-09 is under challenge. He has raised a ground that at one stage, the Deputy Commissioner found that the appointment of the petitioner is correct and on the same set of evidence, the Deputy Commissioner raised suspicion on the certificate and appointment of the petitioner.

6. The learned counsel has further submitted that the decision in favour of the petitioner was taken on 24.07.2008 itself as contained in Annexure- 7, but the respondent Deputy Commissioner, vide another order dated 16.07.2009, illegally directed the District Superintendent of Education to frame charge against the petitioner by initiating a departmental proceeding and consequently, the impugned order dated 16.07.2009 is illegal and is fit to be set-aside.

Arguments of the petitioner in W.P.(S) No. 5126 of 2009

7. Learned counsel for the petitioner has submitted that the impugned order dated 29.09.2009 has been passed pursuant to the order impugned in W.P.(S) No. 3758 of 2009.

8. He also submits that there is an allegation of fraud and taking appointment by impersonation so far as the petitioner is concerned and it has been alleged that the petitioner has taken appointment in place of Nina Kumari Sah (present respondent no. 6).

9. He submits that pursuant to order passed in the writ proceedings being W.P. (S) No. 573 of 2006 disposed of on 01.05.2008 Misc. Case No. 5 of 2008-09 was instituted by the Deputy Commissioner and notices were issued to the petitioner as well as private respondent no. 6 and the order-sheet indicates that the private

respondent no. 6 never appeared pursuant to such notice to produce her original records and satisfy the authority about her genuineness. Ultimately an order was passed closing the proceedings and rejecting the complaint of the private respondent no. 6.

10. He further submits that after the order was passed on 21.04.2009 in the contempt proceedings being Contempt Case (Civil) No. 438 of 2008, the authority proceeded with the matter again and another order dated 16.07.2009 was passed which was in favour of the private respondent no. 6. He submits that the Deputy Commissioner, while passing the impugned order dated 16.07.2009, had directed the District Superintendent of Education to initiate a proceeding by framing a charge against the petitioner in connection with the alleged fraud and impersonation, but the District Superintendent of Education, without initiating any proceeding, has passed the orders as contained in Annexure- 12 and 13 whereby the service of the petitioner has been terminated and in her place, the private respondent no. 6 has been given the appointment.

11. The learned counsel for the petitioner has submitted that the perusal of the order contained in Letter No. 1234 dated 08.09.2009[(Annexure- 12 in W.P.(S) No. 5126 of 2009] reflects that the District Superintendent of Education was of the view that the Deputy Commissioner has already determined the issue and therefore, no proceeding was required to be initiated and accordingly, even the termination of the petitioner by virtue of the impugned order contained in Memo No. 1359 dated 29.09.2009 [Annexure- 13 in W.P.(S) No. 5126 of 2009] is in violation of the order dated 16.07.2009 passed by the Deputy Commissioner. He has also submitted that the petitioner was appointed as back as in the year 1988 and the complaint by the private respondent was filed only in the year 2004.

Arguments on behalf of the respondents

12. The learned counsels for the respondents, on the other hand, while opposing the prayer of the petitioner have referred to the counter-affidavit filed in W.P.(S) No. 3758 of 2009 and have referred to paragraph 24 wherein it has been stated that charge was already framed against the petitioner vide Memo No. 418 dated 24.03.2006, but the petitioner never gave any reply to the said charge and before termination of service, an opportunity was given to her to reply , but she never bothered to say anything in the matter.

13. The learned counsels have further submitted that one First Information Report was also instituted against the petitioner which has been brought on record by filing supplementary counter-affidavit by the private respondent no.6 bearing Sahebganj Sadar Nagar P.S. Case No. 178 of 2011 dated 14.10.2011.

14. However, during the course of arguments, it is not in dispute from the side of the respondents also that the orders at Annexure-12 and 13 in W.P.(S) No. 5126 of 2009 have been passed pursuant to the order of the Deputy Commissioner dated 16.07.2009 and the same is not a result of any departmental proceeding against the petitioner.

15. The respondents have not brought on record the inquiry report or the final outcome of the departmental proceedings or the result of the charge which was framed vide memo no. 418 dated 24.03.2006. No rejoinder to the counter-affidavit has been filed in W.P.(S) No. 3758 of 2009.

Rejoinder argument on behalf of the petitioner

16. In response, the learned counsel for the petitioner has submitted that the petitioner had filed an application for quashing of the criminal case being Cr.M.P. No. 331 of 2012 wherein certain interim order was passed in favour of the petitioner, however, the same has been dismissed for non-prosecution by this court on 14.03.2022. A copy of the said order has been produced by the learned counsel for the petitioner which is taken on record. The learned counsel for the petitioner has further submitted that he has filed an application for restoration of the Cr.M.P. No. 331 of 2012 which is pending.

Findings of this Court

17. W.P.(S) No. 3758 of 2009 has been filed for quashing the order dated 16.07.2009 passed in Misc. Case No. 05/2008-09 by the Respondent Deputy Commissioner, Sahibganj whereby he has directed the District Superintendent of Education, Sahibganj to frame charge and initiate departmental proceeding and terminate the services of the petitioner in accordance with law on account of her illegal appointment as Assistant teacher and also directed to consider the appointment of the Respondent No. 6 as Assistant teacher in accordance with law.

18. W.P.(S) No. 5126 of 2009 has been filed for quashing the order contained in Memo No. 1359 dated 29.09.2009 by which the District Superintendent of Education, Sahibganj has cancelled the appointment of the petitioner with immediate effect and terminated her from service. It is alleged that the order of termination has been passed without giving any show cause notice or opportunity to the petitioner. The impugned order also directed for issuance of appointment letter to Respondent No. 6.

19. The order contained in Memo No. 1359 dated 29.09.2009 which is impugned in W.P.(S) No. 5126 of 2009 is consequential and sequel to order dated 16.07.2009 passed in Misc. Case No. 05/08-09 impugned in W.P.(S) No. 3758 of 2009.

20. The foundational facts giving rise to filing of W.P.(S) No. 3758 of 2009 by the petitioner are as under:

(a) The petitioner claims to have been appointed on the post of Assistant Teacher on 01.01.1988 pursuant to advertisement no. 1 of 1987. It is the case of the petitioner that necessary verification was done with regard to her certificates and the petitioner continued to discharge her duties.

(b) In the year 2004, the respondent no. 6 raised a dispute regarding the appointment of the petitioner stating that the petitioner has taken employment

in place of respondent no. 6 by impersonation and by forging documents.

(c) The petitioner has referred to the list by which the candidates were called for interview and it is the case of the petitioner that the name of the petitioner stood at Serial No. 45 whereas name of respondent no. 6 stood at serial no. 4 in the list.

(d) Pursuant to the complaint made by respondent no. 6, the Deputy Commissioner, Sahibganj issued memo no. 821 dated 12.07.2004 directing the petitioner to appear for verification of her certificates.

(e) It is the case of the petitioner that the petitioner appeared before the Deputy Commissioner on various dates including on 09.08.2004, and submitted her entire certificates for verification.

(f) An inquiry report dated 28.12.2004 was prepared in connection with the appointment of the petitioner which was against the petitioner, but no action was being taken against the petitioner.

(g) In aforesaid circumstances, the respondent no. 6 filed a writ petition before this Court bearing W.P.(S) No. 573 of 2006 seeking a direction upon the Deputy Commissioner to take a decision on the inquiry report dated 28.12.2004 in connection with illegal appointment of the petitioner. During the writ proceedings, it was submitted by the present respondent no. 6, who was the writ petitioner in the said case, that the inquiry report was submitted on 28.12.2004, but no decision was taken on the same. However, the counsel for the respondents was not in a position to state as to whether any decision was taken on the inquiry report or not.

(h) However the writ petition filed by the private Respondent No. 6 being W.P.(S) No. 573 of 2006 was disposed of vide order dated 01.05.2008 directing the Deputy Commissioner, Sahibganj to communicate the decision, if already taken on the said report dated 28.12.2004 to the petitioner of the said case, but if no decision has been taken on the said report, the decision was directed to be taken by a speaking order in accordance with law after giving an opportunity of hearing to the petitioner of the said case as well as to the petitioner of the present case and to communicate the order to the parties as early as possible.

(i) The records of the present case reveals that the Deputy Commissioner, Sahibganj, upon receipt of inquiry report from the Directorate of District Rural Development Authority, Sahibganj, found the allegation against the present petitioner to be correct and the Deputy Commissioner, vide letter no. 111 dated 03.02.2006, had directed the District Superintendent of Education, Sahibganj to frame charge against the present petitioner.

(j) Pursuant to such direction, the District Superintendent of Education, Sahibganj vide memo no. 418 dated 24.03.2006 framed charge against the present petitioner in Prapatra- 'Ka'.

(k) After disposal of the writ petition bearing W.P.(S) No. 573 of 2006, the present respondent no. 6 filed an application dated 25.06.2008 seeking her appointment in place of the present petitioner before the Deputy Commissioner which was numbered as Miscellaneous Case No. 5 of 2008-09.

(l) Vide order dated 02.07.2008 passed in Miscellaneous Case No. 5 of 2008-09, the Deputy Commissioner directed the present petitioner as well as the present respondent no. 6 to appear before him with their respective certificates, but the respondent no. 6 never produced her certificate for verification and finally on 24.07.2008, the claim of respondent no. 6 was rejected.

(m) The application of the private respondent no. 6 stood rejected vide order dated 24.07.2008 passed in Miscellaneous Case No. 5 of 2008-09 and was communicated vide memo no. 70 dated 14.08.2008 to the petitioner as well as private respondent no. 6 and also to the District Superintendent of Education, Sahibganj.

(n) In the meantime the private respondent no. 6 filed contempt application being Contempt Case (Civil) No. 438 of 2008 alleging non-compliance of order passed in W.P.(S) No. 573 of 2006 in which the Deputy Commissioner, Sahibganj filed his show-cause wherein it was stated that with regard to appointment of Mina Kumari Sah (present petitioner) in place of Nina Kumari Sah (present respondent no.6) , an inquiry has been conducted by Directorate of District Rural Development Authority, Sahibganj, and charge against Mina Kumari Sah (the present petitioner) has been framed by the District Superintendent of Education, Sahibganj.

(o) The records of these cases reveal that a number of letters including letter no. 575 dated 10.04.2009 [(annexure-B) to the counter affidavit filed by Respondent no-6 in W.P.(S) No. 5126 of 2009] was issued by the District Superintendent of Education , Sahibganj, to the petitioner by referring to the memo no. 418 dated 24.03.2006 framing charge against the present petitioner in Prapatra- 'Ka', asking the petitioner to explain as to why the petitioner has not been submitting the original certificates and consequently, why her services be not terminated and it was also directed to stop payment of salary to the petitioner from March 2009.

(p) The Contempt Case (Civil) No. 438 of 2008 was disposed of vide order dated 21.04.2009, inter alia, mentioning that a show cause notice was issued to the present petitioner on 10.04.2009. The contempt petition was disposed of directing the opposite party no.3 (the present petitioner) to file reply to the show cause within 2 weeks and the concerned authorities were directed to take decision as early as possible and preferably within 6 weeks from the date of disposal of the contempt case and liberty was reserved with the present respondent no. 6 to pray for revival of the contempt case.

(q) From the perusal of the aforesaid order dated 21.04.2009 disposing of Contempt Case (Civil) No. 438 of 2008 it appears that taking note of the

aforesaid show cause notice issued to the present petitioner on 10.04.2009 [which in turn was issued as a sequel to the various letter issued to the petitioner pursuant to framing of charge against the petitioner in Prapatra- 'Ka' vide memo no. 418 dated 24.03.2006], the contempt petition was disposed of so that the allegation against the petitioner is taken to a logical end.

(r) The records of W.P.(S) No. 5126 of 2009 further reveal that it has been stated by the petitioner in the writ petition that the petitioner had submitted representation lastly on 06.04.2009 and 09.04.2009 (Annexure- 18 and 18/1) with regard to submission of documents. Upon perusal of Annexure- 18 and 18/1 it appears that the petitioner has been submitting photocopy of the document repeatedly by saying that she has produced the original for perusal earlier before the District Superintendent of Education/Deputy Commissioner.

(s) The writ petition being W.P.(S) No. 5126 of 2009 is also completely silent with regard to the response of the petitioner pursuant to letter no. 575 dated 10.04.2009 issued by the District Superintendent of Education asking the petitioner to deposit the original certificate before the authority and further, the writ petition is completely silent with regard to compliance of order dated 21.04.2009 passed in Contempt Case (Civil) No. 438 of 2008 directing the writ petitioner to file reply to the show-cause dated 10.04.2009 within two weeks, wherein the petitioner was directed to deposit the original certificates.

(t) Thus, the petitioner has neither complied the direction to deposit the original certificates before the District Superintendent of Education pursuant to the show-cause dated 10.04.2009 issued by the District Superintendent of Education nor complied the order dated 21.04.2009 passed in Contempt Case (Civil) No. 438 of 2008 directing the present writ petitioner to file reply to the show-cause dated 10.04.2009 within two weeks.

(u) After the order dated 21.04.2009 was passed in Contempt Case (Civil) No. 438 of 2008, the Deputy Commissioner issued notice to the petitioner as well as respondent no. 6 in the same Miscellaneous Case No. 05 of 2008-09 and granted opportunity of hearing to both of them and passed order dated 16.07.2009 which is impugned in W.P.(S) No. 3758 of 2009.

(v) Before the Deputy Commissioner in Miscellaneous Case No. 05 of 2008-09, both the parties produced the documents and the Deputy Commissioner also recorded that vide letter no. 111 dated 03.02.2006, the District Superintendent of Education was directed to frame charges against the present petitioner and pursuant to such direction, the District Superintendent of Education, Sahibganj had framed the charges in Prapatra- 'Ka' vide memo no. 418 dated 24.03.2006 against the present petitioner. The aforesaid fact was a part of submission advanced on behalf of the private respondent no. 6 who was termed as the applicant before the Deputy Commissioner. The Deputy Commissioner also recorded the submission of the present petitioner who relied upon order dated 24.07.2008 wherein the application of the private respondent no. 6 was rejected

and the present petitioner had also submitted that the fresh proceedings were started on account of order dated 21.04.2009 passed by the High Court in Contempt Case (Civil) No. 438 of 2008 and the present petitioner requested the Deputy Commissioner to exonerate her from the charges.

(w) After recording the submissions of both the parties in Miscellaneous Case No. 05 of 2008-09, the learned Deputy Commissioner summarized entire selection procedure and also the fact that the allegation regarding irregularity in appointment was duly inquired into by Directorate of District Rural Development Authority, Sahibganj, who found that there have been irregularities and consequently directed the District Superintendent of Education to frame charges against the petitioner and also to take steps for appointment of the private respondent no. 6. This order dated 16.07.2009 is the impugned order in W.P.(S) No. 3758 of 2009.

(x) The present petitioner in W.P.(S) No. 3758 of 2009 has neither disclosed about framing of charge against her in Prapatra- 'Ka' vide memo no. 418 dated 24.03.2006 nor has annexed the aforesaid show cause notice dated 10.04.2009 nor has annexed the final order passed in Contempt Case (Civil) No. 438 of 2008 which directed the petitioner to respond to the show cause notice dated 10.04.2009 and also directed the respondents to take the matter to a logical end. The petitioner has neither annexed a copy of her reply, if any, to the aforesaid show cause notice dated 10.04.2009 nor has even disclosed as to whether she filed her response to the show cause notice dated 10.04.2009 and filed the writ petition challenging the order dated 16.07.2009 passed in Misc. Case No. 05 of 2008-09 on the ground that the matter was closed and decided in favour of the petitioner vide order dated 24.07.2008 and alleged that unfortunately the deputy commissioner vide impugned order dated 16.07.2009 directed the District Superintendent of Education to frame charge against the petitioner and initiate a departmental proceedings.

21. The grievance of the petitioner in W.P.(S) No. 3758 of 2009 is that in earlier stage of Miscellaneous Case No. 05 of 2008-09, vide final order dated 24.07.2008, the documents submitted by the petitioner were found to be correct and on the same set of facts and materials on record, the Deputy Commissioner raised suspicion on the certificate and appointment of the petitioner and passed impugned order dated 16.07.2009 directing the District Superintendent of Education, Sahibganj to frame charge against the petitioner for departmental proceedings and to take appropriate steps for appointment of Nina Kumari Sah (Respondent no. 6).

22. The cause of action to file W.P.(S) No. 3758 of 2009 as per the learned counsel for the petitioner is that once the inquiry was already concluded vide aforesaid final order dated 24.07.2008 in Miscellaneous Case No. 05 of 2008-09 by the Deputy Commissioner after verifying the certificates of the petitioner during which the private respondent no. 6 never produced her documents and the complaint of the private respondent no. 6 was rejected vide order dated

24.07.2008, then under such circumstances, there was no occasion to reopen Miscellaneous Case No. 05 of 2008-09 and pass another order dated 16.07.2009 on the same set of material and draw an adverse order against the petitioner vide order dated 16.07.2009 which is impugned in the present proceedings.

23. Upon perusal of the order dated 24.07.2008 passed by the Deputy Commissioner, Sahibganj in Miscellaneous Case No. 05 of 2008-09 it is apparent that the same was instituted on the basis of an application filed by the private respondent no. 6 seeking her appointment in place of the present petitioner, but the same was rejected on account of non-submission of her documents.

24. Pursuant to order dated 01.05.2008 passed in W.P.(S) No. 573 of 2006, the private respondent no. 6 of the present case filed an application dated 25.06.2008 with a request to appoint her as Assistant Teacher. A proceeding was started by the Deputy Commissioner and numbered as Miscellaneous Case No. 05 of 2008-09. Consequently, notice was directed to be issued to the petitioner as well as the private respondent no. 6 to produce the documents for verification before the Deputy Commissioner on 11.07.2008 and consequently, both of them appeared before the Deputy Commissioner on 11.07.2008. In the said proceedings the respondent no.6 refused to deposit her documents. Ultimately an order dated 24.07.2008 as contained in Memo No. 70 dated 14.08.2008 was passed by the Deputy Commissioner, a copy of which was also forwarded to the petitioner as well as private respondent no. 6. As per the order dated 24.07.2008, the private respondent no. 6 did not deposit her original documents before the Deputy Commissioner and ultimately, her application seeking appointment as Assistant Teacher was rejected. The order dated 24.07.2008 does not reflect that the Deputy Commissioner was satisfied with the documents submitted by the present petitioner or the documents of the petitioner were examined by the Deputy Commissioner and were found satisfactory. It only indicates that the application filed by private respondent no. 6 seeking appointment was rejected.

25. This Court is of the considered view that non submission of her documents by the Respondent no.6 and consequent rejection of her application vide order dated 24.07.2008 passed in Miscellaneous Case No. 05 of 2008-09 does not mean that the certificates/ documents submitted by the present petitioner for seeking appointment were automatically found to be correct and genuine. In fact, in the order dated 24.07.2008, no such finding in favour of the present petitioner has been recorded. Accordingly, the petitioner cannot have any advantage of the order dated 24.07.2008 and the argument of the petitioner that the documents of the petitioner were verified by the Deputy Commissioner and consequently the matter was decided in favour of the petitioner vide order dated 24.07.2008, is misconceived and is accordingly rejected.

26. The impugned order dated 16.07.2009 is required to be further examined with regards to its nature and directions contained therein.

27. The records of the case reveal that after the order passed in contempt application, both the petitioner as well as the private respondent no. 6 were noticed by the Deputy Commissioner and both of them appeared before the Deputy Commissioner in Miscellaneous Case No. 05 of 2008-09. Thus, the proceeding in Miscellaneous Case No. 5 of 2008-09 was against started and both the parties were directed to appear before the Deputy Commissioner on 16.07.2009 and the impugned order dated 16.07.2009 has been passed after hearing both of them.

28. Before the Deputy Commissioner in Miscellaneous Case No. 5 of 2008-09, both the parties produced the documents and the Deputy Commissioner also recorded that vide letter no. 111 dated 03.02.2006, the District Superintendent of Education was directed to frame charges against the present petitioner and pursuant to such direction, the District Superintendent of Education, Sahibganj had framed the charges in Prapatra- 'Ka' vide memo no. 418 dated 24.03.2006 against the present petitioner. The aforesaid fact was a part of submission advanced on behalf of the private respondent no. 6 who was termed as the applicant before the Deputy Commissioner. The Deputy Commissioner also recorded the submission of the present petitioner who relied upon order dated 24.07.2008 wherein the application of the private respondent no. 6 was rejected and the present petitioner had also submitted that the fresh proceedings were started on account of order dated 21.04.2009 passed by the High Court in Contempt Case (Civil) No. 438 of 2008 and the present petitioner requested the Deputy Commissioner to exonerate her from the charges.

29. After recording the submissions of both the parties in Miscellaneous Case No. 05 of 2008-09, the learned Deputy Commissioner summarized entire selection procedure and also the fact that the allegation regarding irregularity in appointment was duly inquired into by Directorate of District Rural Development Authority, Sahibganj, who found that there have been irregularities and consequently directed the District Superintendent of Education to frame charges against the petitioner and also to take steps for appointment of the private respondent no. 6. This order dated 16.07.2009 is the impugned order in W.P.(S) No. 3758 of 2009.

30. This Court finds that the Deputy Commissioner, while passing the impugned order dated 16.07.2009 recorded the submission of both the sides, and issued direction to the District Superintendent of Education asking him to frame charges against the petitioner. While, the Deputy Commissioner has failed to consider that the charges against the petitioner were already framed vide memo no. 418 dated 24.03.2006 in Prapatra- 'Ka'. The said Prapatra- 'Ka' has also been brought on record before this Court as Annexure- 15 to the writ petition being W.P.(S) No. 5126 of 2009.

31. This Court also finds that the Deputy Commissioner, instead of asking the District Superintendent of Education to take the charge already framed as back as on 24.03.2006 vide Memo No. 418 against the petitioner to a logical end by

conducting departmental proceeding asked the District Superintendent of Education to frame charge and to proceed against the petitioner. Accordingly, the impugned order dated 16.07.2009 to the extent it directs the District Superintendent of Education to frame charges against the petitioner, cannot be sustained in the eyes of law as the charge was already framed in Prapatra- 'Ka' vide memo no. 418 dated 24.03.2006. The Deputy Commissioner ought to have directed the District Superintendent of Education to take the charges already framed against the petitioner vide memo no. 418 dated 24.03.2006 to a logical end by conducting the departmental proceedings.

32. The records of the case reveal that the charge framed against the petitioner as back as in the year 2006 was not taken to a logical end and pursuant to order dated 16.07.2009, the petitioner was straightaway terminated by the District Superintendent of Education which is the order impugned in the connected writ petition being W.P.(S) No. 5126 of 2009. The said order has been mechanically passed and the District Superintendent of Education has not complied with the order of the Deputy Commissioner dated 16.07.2009 who had asked him to frame charge against the petitioner and proceed.

33. The District Superintendent of Education ought to have brought to the notice of the Deputy Commissioner that charge was already framed against the petitioner in the year 2006 and ought to have proceeded with the same charge by conducting the departmental proceedings.

34. In such circumstances, the order contained in Memo No. 1359 dated 29.09.2009 which is impugned in W.P.(S) No. 5126 of 2009 passed by the District Superintendent of Education in mechanical manner in purported compliance of order dated 16.07.2009 also cannot be sustained in the eyes of law and is accordingly set-aside to the extent it terminates the services of the petitioner.

35. Summary of findings: -

a. The charges were framed against the petitioner vide memo no. 418 dated 24.03.2006.

b. In continuation of the said charge dated 24.03.2006, the petitioner was asked to produce the documents vide letter no. 575 dated 10.04.2009 issued by the District Superintendent of Education, Sahibganj, but the petitioner did not respond.

c. The charge dated 24.03.2006 was not taken to a logical end through a departmental inquiry against the petitioner so as to give full opportunity to the petitioner to defend herself.

d. The Deputy Commissioner while passing the order dated 16.07.2009 directing the District Superintendent of Education, Sahibganj to frame charges against the petitioner and proceed has failed to consider that charge was already framed against the petitioner as back as on 24.03.2006.

e. The District Superintendent of Education, Sahibganj neither complied the directions issued by the Deputy Commissioner contained in order dated 16.07.2009, wherein a direction was issued to frame charge against the petitioner and proceed for termination of services of the petitioner in accordance with law, nor brought the fact to the knowledge of the Deputy Commissioner that charge was already framed in the year 2006, and mechanically terminated the services of the petitioner vide Memo No. 1359 dated 29.09.2009 as a direct consequence of order dated 16.07.2009 passed by the Deputy Commissioner, Sahibganj. Thus, the petitioner has been terminated without departmental inquiry although the charge was framed as back as on 24.03.2006.

36. As a consequence of the aforesaid findings the following order is passed: -

I. The order dated 16.07.2009 passed by the Deputy Commissioner, Sahibganj directing the District Superintendent of Education, Sahibganj to frame charge against the petitioner is set-aside as the charge against the petitioner was already framed vide Memo No. 418 dated 24.03.2006.

II. The Memo No. 1359 dated 29.09.2009 issued by the District Superintendent of Education, Sahibganj straightaway terminated the services of the petitioner as a direct consequence of order dated 16.07.2009 passed by the Deputy Commissioner, Sahibganj, is set aside to the extent it terminates the services of the petitioner as the same has been passed without conducting any departmental inquiry against the petitioner and has resulted in gross violation of principles of natural justice and fair play.

III. The petitioner is directed to appear before the District Superintendent of Education, Sahibganj on 18.07.2022 along with a representation and a copy of this order and submit the original documents/certificates asked for by the District Superintendent of Education, Sahibganj, vide letter no. 575 dated 10.04.2009. The petitioner shall also furnish her complete postal address, phone number and e-mail id in the representation for all future communications through one or multiple modes.

IV. Upon appearance of the petitioner and submission of documents in original in terms of letter no. 575 dated 10.04.2009, the District Superintendent of Education, Sahibganj is directed to take all steps to ensure that the departmental proceedings arising out of the charge framed against the petitioner vide memo no. 418 dated 24.03.2006 is taken to a logical end latest by 15.12.2022 in accordance with law after giving full opportunity to the petitioner to defend her case.

V. The consequential relief, if any, is to be decided by the disciplinary authority depending upon the final outcome of the disciplinary proceedings.

VI. The petitioner is directed to fully cooperate with the departmental proceedings. In case the petitioner has attained the age of superannuation, the same will have no bearing as the charges were already framed against the

petitioner vide memo no. 418 dated 24.03.2006.

37. These two writ petitions are partly allowed with the aforesaid observations / directions.