

**(2005) 09 JH CK 0058**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 2352 of 1999 (R)**

Shiva Narain Singh

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Others

RESPONDENT

**Date of Decision :** 15-09-2005

**Acts Referred:**

Bihar Pension Rules, 1950 — Rule 43B

**Citation :** (2005) 4 JCR 467

**Hon'ble Judges :** R.K. Merathia, J

**Bench :** Single Bench

**Advocate :** V. Shivrath, M.B. Lal, Anita Sinha and Rekha Shankar, for the Appellant; H.K. Singh, S.C. I for respondent Nos. 1 to 4, for the Respondent

## Judgement

R.K. Merathia, J.—In this writ petition, petitioner prayed for a direction to release his retiral dues and for quashing his punishment order dated 24.6.1999 (Annexure-8).

2. Petitioner was posted at Harijan Middle School, Jojobera, Jamshedpur since 25.4.1983. He became Head Master. After about 13 years, he was transferred to Middle School. Musabani, Jamshedpur by order 28.2.1996/4.3.1996. He was relieved on 19.3.1996 and the other Head Master Sri Hem Chandra Jha was posted at his post. He challenged his transfer order vide CWJC No. 990 of 1996 (R) which was disposed of with liberty to file representation. His representation was rejected. He again filed writ petition, being CWJC No. 3256 of 1996 (R) challenging the rejection of his representation. On 17.12.1996, an interim order of stay of transfer was passed. Pursuant to the said interim order, an order dated 14.2.1997 was issued by the Department. The said writ petition was dismissed on 10.3.1997 and, accordingly, on 22.4.1997 petitioner was ordered to join his transferred post. Petitioner filed appeal (L.P.A. No. 213 of 1997 (R) against the dismissal of his writ petition which he withdrew on 5.5.1997 unconditionally. Even then he challenged the said consequential order dated 22.4.1997 issued pursuant to dismissal of his writ petition vide CWJC No. 1680 of 1997 (R), which

was also dismissed on 8.7.1998, holding that the petitioner cannot be allowed to agitate the same matter again and again and that he did all this at his own risk, as before the withdrawal of the said L.P.A, the order dated 22.4.1997 was already issued directing him to join pursuant to the dismissal of his earlier writ petition.

It may be noted here that the petitioner, in this writ petition has suppressed about the filing and the order passed in CWJC No. 1680 of 1997 (R), dated 8.7.1998 which is annexed by the respondents as Annexure-E to the counter-affidavit.

3. Petitioner was suspended on 6th October, 1997. The following charges of indiscipline and insubordination were served on him on 31.12.1998 :

Petitioner was relieved on 19.3.1996, but he did not hand over the charge to the Head Master, who joined on his post. Pursuant to the interim order of stay, petitioner was also posted in February, 1997, but he drew salary etc., with effect from March, 1996 without any authority, and thereby, committed financial irregularity to the tune of Rs. 2,68,239/-. Petitioner did not hand over charge and kept records of the School with him, though he was relieved on 19.3.1996 and other Head Master was posted at his post. Even after he was relieved, again on 25.5.1997, (after dismissal of his writ petition) he did not hand over the charge fully, keeping with him the Cash Book, Bill, Salary Payment Register etc. Moreover, he did not accept the letters addressed to him.

Petitioner replied to the said charges on 19.1.1999. An enquiry report was submitted on 20.1.1999. Petitioner retired on 31.1.1999. In the meeting of the District Education Establishment Committee held on 8.6.1999, the said enquiry report was accepted and the following order of punishment was passed :

- (a) The period from 20.3.1996 to 17.12.1996 not to be treated on duty.
- (b) From 18.12.1996 to 22.4.1997, he was treated on duty in the Middle School, Jojobera, Jamshedpur.
- (c) From 23.4.1997 to 5.10.1997, he was treated not on duty; and
- (d) From 6.10.1997 till is date of retirement i.e. 31.1.1999 is the suspension period.

It was ordered that during the suspension period, nothing will be paid except the subsistence allowance; the salary will be paid withholding two annual increments; for the period of work, payment order will be released by the Middle School, Musabani and the excess amount drawn by petitioner will be adjusted from the final payment.

4. It may be noted that in paragraph-13 of the counter-affidavit, it is explained that the punishment order is dated 24.6.1999 and not on 24.4.1999 which was a mistake in the duplicate copy of the order.

5. It is submitted by Mr. V. Shivnath, learned counsel appearing for petitioner that Sub-Divisional Education Officer, Dalbhum at Jamshedpur was made the enquiry Officer, but the enquiry report (Annexure-B) shows that enquiry was done by the Area Education Officer-cum-Enquiry Officer and, therefore, there was no enquiry in the eyes of law. He further submitted that the principles of natural justice were not complied in the enquiry proceedings as the petitioner was not given an opportunity of hearing; he was not even supplied a copy of the enquiry report and he was not given second show cause notice regarding punishment. Learned counsel relied on the decision of Managing Director, ECIL, Hyderabad v. B. Karunakar AIR 1994 SC 1974. He further submitted that subsistence allowance having not been paid, the whole proceeding is vitiated. For this, he relied on the decision of Jagdamba Prasad Shukla Vs. State of U.P. and Others, . He further submitted that after retirement of the petitioner, the proceeding was not converted as per the provisions of Rule 43-B of the Bihar Pension Rules and, therefore, the entire proceedings are vitiated.

6. It appears that the Sub-Divisional Education Officer, Dalbhum was made the Enquiry Officer by order dated 6.10.1997 but in the charge-sheet issued on 31.12.1998, the Area Education Officer, Musabani was appointed as an Enquiry Officer. In that view of the matter, the objection of Mr. V. Shivnath the enquiry was not done by the person who was appointed as an Enquiry Officer cannot be accepted.

7. This is a case of minor penalty. Enquiry was initiated in this case and charge-sheet was served on the petitioner against which he filed his show cause. The Enquiry Officer found that the charges were proved. He further found that petitioner did not had over charge and the records of the School.

8. In my view, there has been no violation of the principles of natural justice. In the writ petition, it was not stated that a copy of enquiry report was not supplied. Even after the enquiry report was annexed/ supplied with the counter-affidavit, petitioner simply stated in a supplementary affidavit that the respondents never supplied the enquiry report to him, which caused prejudice but Mr. Shivnath could not satisfy this Court as to how prejudice has been caused to the petitioner. In the case of Managing Director, ECIL (supra), it is held that if the Court comes to the conclusion that non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court should not interfere with the order of punishment. It is further said in this judgment that the Court should not mechanically set aside the order of punishment on such ground unless it is show that grave prejudice has been caused to the employee. (Please see Para (V) at Page 1092 of the Report). The case of Jagdamba Prasad (supra), is also of no help to the petitioner as in that case due to non-payment of subsistence allowance, the delinquent could not take part in the enquiry proceeding and, as such; it was held that the principles of natural justice was not followed which is not the position in this case.

9. After considering the matter carefully, I am satisfied that the impugned order

of penalty needs no interference. The penalty imposed is not impermissible or shocking the conscience of this Court, and therefore, in view of the judgment of Supreme Court in the case of *The Regional Manager and Disciplinary Authority, State Bank of India Hyderabad and Anr. v. S. Mohammed Gaffar* 2002 (3) JLJR 92 (SC), no interference is called for in the order of punishment.

10. It is submitted by Mr. Shivnath, at last, that only group Insurance and provident fund have been paid to the petitioner during pendency of this writ petition. In the counter-affidavit, it is stated that other payments could not be made as petitioner is not cooperating by providing his Service Book and pension paper and as soon as the same is provided, it will be forwarded to the Accountant General, Bihar. This has not been denied by petitioner in his rejoinder to the counter-affidavit. However, it is submitted by Mr. Shivnath that the Service Book is not with the petitioner and it must be with the Department.

11. If the Service Book is not available, the same should be reconstructed and all retiral dues legally payable should be paid to the petitioner with the details of calculation of payment. This exercise should be completed within four months of the communication of this order. If petitioner has got any objection to such calculation/payment, he may represent before the concerned authority, who will look into the matter, pass a reasoned order, and communicate it to the petitioner within two months of the receipt of such representation.

12. With these observations and directions, this writ petition is disposed of.