

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.952 of 2025

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Raman Kumar @ Raman Kumar Singh S/o Late Triveni Prasad Singh,
resident of Village-Babu Babhani, Babhuni, Babhawani Bholwa, P.S.-
Singheshwar, Dist-Madhepura at present resident at Sukhanagar Ward
No.-17, Madhubani, P.S.-K. Hat, Dist-Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary Deptt. of Education, Bihar, Patna.
3. The Director, Secondary Education, Bihar, Patna.
4. The Deputy Director, Secondary Education, Bihar, Patna.
5. The Collector, Purnia.
6. Sri Shiv Nath Razak, The District Education Officer, Purnia.
7. The District Programme Officer, Purnia.
8. Md. Soyeb Alam, the Incharge Principal, Zila School, Purnia.
9. Mrs Seema Kumari, the Incharge Principal, Zila School, Purnia.
10. Diwakant Jha, Incharge Principal, Zila School, Purnia.
11. Md. Arsad Alam, the Incharge Principal, Zila School, Purnia.
12. Ghanshayam Singh, Clerk, Rajkiya Zila School, Purnia.
13. Vishambhar Tatma, Madhyamik Clerk, Zila School, Purnia.

... .. Respondent/s

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*Service Law--- Bihar Pension Rules, 1950--- Rule 43(b)--- Departmental
Proceeding---challenge to charge memo--- a charge memo can be
challenged on limited grounds and the judicial review against the charge
memo is to be exercised cautiously--- writ petition against the charge
memo can be entertained, if the same has been issued by an incompetent
authority, having no jurisdiction or an allegation of malafide is raised or
if the same is in violation of the statutory rules in force--- petitioner has
been able to show that the charge memo was not communicated to him
which shows that the appointing authorities have deliberately not taken
any action to appoint the Conducting Officer and the Enquiry Officer*

even after lapse of more than one year--- action on the part of the Respondents can be said to premature--- charge-sheet or show cause notice doesn't give rise to any cause of action because it doesn't amount to an adverse order, which affects the right of any party, however, at the same time charge memo cannot be issued in a casual or routine manner and the disciplinary authority is required to apply his mind before its issuance--- Disciplinary Authority, if so desire, may proceed in accordance with law---writ disposed. (Para-6, 10, 11)

*(1994) 3 SCC 357, 2018 (17) SCC 677, 2006 (12) SCC 28, 2012 (11) SCC 565, 1998 Writ. LR 641, (2011) 5 SCC 142
.....Relied Upon.*

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Mallick, Advocate
For the Respondent/s : Mr. Rajeev Shekhar, AC to GA-13

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 23-01-2025

Heard Mr. Pramod Kumar Mallick, learned counsel
appearing on behalf of the petitioner and Mr. Rajeev Shekhar,
learned AC to GA-13 for the State.

2. The petitioner in paragraph no. 1 of the present writ
petition has sought *inter alia* following relief(s), which is
reproduced hereinafter:

*"(i) To quash the order dated 19.04.2023
passed by the respondent no-03, the Director*



Secondary Education, Bihar, Patna Whereby the respondent no -03, the Director Secondary Education, Bihar, Patna directing the respondent no - 06, the District Education Officer, Purnia to initiate the departmental Proceeding against the petitioner Raman Kumar Singh within a week after receiving the letter. (annexure-P/14)

(ii) Further quash the order dated 10.05.2023 passed by Sri Shiv Nath Ra zak the respondent no - 06, the District Education Officer, Purnia whereby the respondent no - 06 the District Education Officer, Purnia charge sheeted the petitioner Raman Kumar Singh alleging that in four head a) Not handed over the Charge and disobey the order of department, b) Petitioner has been directed by letter no -328 dated 02.02.2023 to hand over charge within two days but it was disobeyed c) Due to keep the financial record in his custody it delayed in payments of various heads of the employees and the students passed out in the examination and as such they suffered by his behaviour and conduct.d) The act of the petitioner Raman Kumar Singh is against the rule of service code. (Annexure - 15)

(iii) To grant any other relief or reliefs as to which the petitioner is entitle in the facts and circumstances of the case."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had retired from the post of Head Clerk, Zila School, Prunia on 31.01.2023 and nearly after three months of retirement, a decision was taken by the Director, Secondary Education, directing on 19.04.2023 for initiating a Departmental Proceeding against the petitioner as per the provision contained in Rule 43(b) of the Bihar Pension Rules, 1950. Accordingly, the petitioner was served 'Prapatra-K' containing the charge-sheet dated 10.05.2023 was communicated to the petitioner. From the content of the charge



memo contained in Memo No. 1037 dated 11.05.2023 reveals that a copy of which was only sent to the Regional Director of Education, Purnia Pramandal and Director, Secondary Education by the District Education Officer, Purnia. Learned counsel submitted that the petitioner is a retired Class-III employee and pursuant to the Letter No. 65 dated 01.03.2023, the petitioner had already submitted the passbook and cheque book to the office of the school, for which he was also given acknowledgment on the same day. On these grounds, learned counsel submitted that the charges contained in 'Prapatra-K' don't constitute misconduct for which the authorities are required to take Disciplinary Action against the petitioner. The petitioner further submitted that though the charge-sheet has been submitted on 10.03.2023 but no action has been taken. The delay caused is against the law as till date Enquiry Officer and Conducting Officer have not been appointed.

4. *Per contra*, learned counsel appearing on behalf of the State submitted that the writ petition is pre-mature. Merely issuance of a charge memo in absence of any decision of the Appointing Authority to initiate Disciplinary Proceeding against the petitioner no prejudice is caused to the petitioner. The writ petition is not maintainable.



5. Heard the parties.

6. It is a settled principle of law that a charge memo can be challenged on the limited grounds and the judicial review against the charge memo is to be exercised cautiously. The writ petition against the charge memo can be entertained, if the same has been issued by an incompetent authority, having no jurisdiction or an allegation of malafide is raised or if the same is in violation of the statutory rules in force. In this regard, it would be gainful to reiterate the view of the Hon'ble Supreme Court in the case of ***Union of India and others Vs. Upendra Singh***, reported in ***(1994) 3 SCC 357***, wherein in paragraph 6, the Apex Court has held as follows:

“6.In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M.



Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8) "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7. The said proposition was reiterated by the Apex Court in the case of ***State of Tamilnadu Vs. Pramod Kumar, IPS & Anr.*** reported in **2018 (17) SCC 677**. It is also apt to extract the relevant portion from the law laid down by the Apex Court in ***Union of India & Anr. Vs. Kunisetty Satyanarayana*** reported in **2006 (12) SCC 28**, which reads as under:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another, AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of UP vs. Brahm datt Sharma and another. AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after



considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

(emphasis supplied)

8. In the case of ***Ministry of Defence vs. Prabhash Chandra Mirdha*** reported in ***2012 (11) SCC 565***, the Hon'ble Supreme Court further held that if a charge-sheet is challenged on the ground of delay in initiation of Disciplinary Proceeding or delay in concluding the proceeding considering the gravity of charge on the ground of delay and quashed the charge-sheet. Paragraph no. 8 of the aforementioned judgment would be relevant to reproduce hereinafter:

"8. Law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/ tribunal may quash the charge- sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

9. The challenge to the charge memo solely on the basis that the same is against the rules prescribed under CCA



rules was considered by the Apex Court and it was held in case of ***T. Ramamoorthy v The Secretary, Sri Ramakrishna Vidyalaya High School, etc. & Others*** reported in ***1998 Writ. LR 641*** that when a statute contemplates a thing to be done in a prescribed manner, the same has to be done, in the manner as provided under law. In Paragraph 6 of the aforesaid judgment, it has been held as follows:

"6. If the statutory provision enacted by the Legislature prescribed a particular mode for terminating the service or dismissing the teaching or a non-teaching staff of a school, it can and has to be done not only in that manner alone, but it cannot be done in any manner too. This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that the other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the power as also its exercise by the management under Section 22 of the Act."

10. In the present case, the petitioner has been able to show that the charge memo was not communicated to him vide Memo No. 1037 dated 11.05.2023, by the District Education Officer but the same has not been communicated to the petitioner which shows that the appointing authorities have deliberately not taken any action to appoint the Conducting Officer and the Enquiry Officer even after lapse of more than one year. The action on the part of the District Education Officer can be said to premature. Petitioner has been able to bring on



record by way of 'Annexure-3', the documents, which were required to be returned back to the school, he had already returned back. In the above background, whether the present writ petition calls for any interference.

11. Thus, the law is well settled in respect of holding charge-sheet or show cause notice doesn't give rise to any cause of action because it doesn't amount to an adverse order, which affects the right of any party, however, at the same time, the Apex Court in the case of *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others* reported in *(2011) 5 SCC 142* held that the charge memo cannot be issued in a casual or routine manner and the disciplinary authority is required to apply his mind before its issuance.

12. The Disciplinary Authority, if so desire, may proceed in accordance with law.

13. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	27.01.2025
Transmission Date	N/A

