

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P(S). No. 491 of 2019

Ashish Kumar Mishra, aged about 65 years, son of Late Puran Chandra Mishra, resident of Village-Panchrulia, P.O Maliua, P.S Barsole, District East Singhbhum, Jharkhand**Petitioner**

Versus

1. The State of Jharkhand
 2. Deputy Commissioner, East Singhbhum at Jamshedpur, P.O. & P.S. Jamshedpur, District East Singhbhum, Jharkhand
 3. District Superintendent of Education, East Singhbhum at Jamshedpur, P.O. & P.S., Jamshedpur, District East Singhbhum Jharkhand
 4. Deputy Superintendent of Education, East Singhbhum at Jamshedpur, P.O. & P.S. Jamshedpur, District East Singhbhum Jharkhand appointed as the enquiry officer of the present petitioner.
 5. Block Education Extension Officer, Baharagora-1 Circle, P.O.+P.S. Baharagora, District East Singhbhum, Jharkhand
 6. Regional Education Officer, Dhalbhumgarh, P.O+PS Dhalbhumgarh, District East Singhbhum, Jharkhand appointed as the Disciplinary Authority
-Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioners : Mr. Mahesh Tewari, Advocate

For the Respondents: Ms. Richa Sanchita, Advocate

14/ Dated: 05.05.2026

1. The instant application has been preferred by the petitioner for the following relief(s):-

- i. For issuance of an appropriate writ/order/direction particularly writ in nature of mandamus commanding upon the respondents particularly respondent no. 2 and 3 to immediately and forthwith send to this Hon'ble Court all the records appertaining to the issuance of Order vide Memo No. 321 dated 31.01.2017 (Annexure 6) passed by the District Superintendent of Education, East Singhbhum, Jamshedpur wherein the petitioner has not been given one increment and 50% of the subsistence allowance for the period from July 2016 till January 2017 as the petitioner is legally entitled of the same which has been illegally stopped by the respondents without there being any such reason for the same.*

- ii. *Thereafter, a humble prayer is being made before this Hon'ble Court to quash/set aside the Order issued vide Memo No. 321 dated 31.01.2017 (Annexure - 6) and the enquiry report on the basis of which the said memo is issued as being completely illegal, arbitrary and blatant misuse of power.*
 - iii. *Thereafter a humble prayer is being made to immediately and forthwith grant one increment to the petitioner which has illegally been stopped from July 2017 till the date of his retirement i.e. on 31.03.2018 and further prayer is being made to the extent that 50% of the subsistence allowance after being paid and the petitioner being allowed to join his post even till the date of his retirement has not been paid, rest 50% of the suspension amount for the period from July 2016 till January 2017, which is completely illegal, arbitrary and the petitioner has been denied his legitimate 50% of the amount which has illegally been retained by the respondents.*
 - iv. *A further direction is prayed to immediately and forthwith make payment of the same to the petitioner as he is entitled for the same and a further prayer is being made to the extent that the promotion to which the petitioner was entitled to the Trained Graduate post (Arts Post) in the year 2017 has also been withheld by the respondents and although the petitioner being senior and his name being present at serial no.1 of the seniority list, but even then he has been denied seniority to which he was entitled on and from January 2017 till the date of his retirement, which should immediately be paid to the petitioner.*
 - v. *A further prayer is being made that a direction may be issued to make payment of 18% P.A. interest, in view of the fact that it is because of the respondents the petitioner has not been paid his legally entitled amount.*
2. The brief facts of the case as per the pleadings is that the petitioner was appointed as Assistant Teacher on 07.03.1977. Thereafter, the petitioner was entrusted with the charge of Headmaster from 01.01.2011 till his retirement on 31.03.2018.
 3. Except for the impugned suspension between July 2016 and January 2017, there has never been any adverse remark or disciplinary action against the petitioner. The entire disciplinary action arose only due to one day absence on 13.07.2016, which

was due to sudden illness, and the same was duly intimated telephonically to the senior teacher and competent authority. Despite revocation of suspension and rejoining of duty, the respondents withheld one annual increment, and paid only 50% subsistence allowance, retaining the remaining 50% and denied promotion to Trained Graduate (Arts) despite petitioner being senior-most (Serial No.1), and was also denied consequential seniority and monetary benefits till retirement. The punishment order contained in Memo No. 321 dated 31.01.2017 and the enquiry report was never supplied.

4. The grievance of the petitioner is that no oral witness has been examined and the Enquiry officer, himself became the representative of the officials and proved the charge and sent the same to the disciplinary authority by giving the finding that punishment should be imposed upon him which is against the settled proposition of law that the Enquiry officer has to act as an Umpire and not as a representative of the department. [Refer *Saroj Kumar Sinha v. State of Uttar Pradesh*¹ (para 26, 27, 28, 29, 30, 33)]
5. Learned counsel further submits that no oral witness has been examined in order to prove the charge which is evident from the entire enquiry report, as such it is not sustainable in the eye of law. He further placed his reliance on the judgment passed in the cases of *Satyendra Kumar Singh v. State of Uttar Pradesh*², *Roop Singh Negi v. Punjab National Bank*³ and *State of Uttar Pradesh v. Ram Prakash Singh*⁴.
6. Learned counsel though defended the impugned order; however, could not point out as to whether any witness was examined and further, he could not defend the order on the issue that the enquiry

¹ (2010)2 SCC 772

² (2024) SCC OnLine SC 3325

³ (2009) 2 SCC 570

⁴ (2025) SCC OnLine SC 891

officer himself became the representative and presenting officer of the respondents.

7. Having regard to the settled proposition of law that the enquiry officer has to act as an Umpire and not as a representative and from the bare perusal of the enquiry report, it appears that he has acted in a manner as if he is the presenting officer in the case.
8. Secondly; admittedly no oral witness was examined to prove the charge against the petitioner and the Enquiry officer himself met with the students and other persons and formed his opinion in proving the charge which is unheard in service jurisprudence and settled proposition of law.
9. Having regard to the aforesaid, impugned order dated *31.01.2017* (*Annexure - 6*) is quashed and set aside, and since as the petitioner is retired employee, no fruitful purpose would be served by remitting the case to the respondents; rather it would further create harassment upon the petitioner.
10. Accordingly, consequential benefits be extended to the petitioner, within a period of 12 weeks from the date of receipt of copy of this order.

(Deepak Roshan, J.)

Abha/-

05.05.2026