

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.22168 of 2013**

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Leela Devi wife of Sri Ramdas Devi, resident of village + Post- Mahisona, P.S. +  
District- Lakhisarai

.... .... Petitioner/s

**Versus**

1. The State of Bihar
2. Principal Secretary, Human Resource Development Department, Government of Bihar, Patna
3. Director, Primary Education, Government of Bihar
4. District Education Officer, Lakhisarai
5. District Program Officer, Establishment, Lakhisarai
6. District Treasury Officer, Lakhisarai
7. Drawing and Disbursing Officer, Upgraded Middle School, Mahisona, District- Lakhisarai

.... .... Respondent/s

**with**

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**Civil Writ Jurisdiction Case No. 1152 of 2015**

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Leela Devi wife of Sri Ramdas Das, resident of village- Mahisona, P.O.-  
Mahisona, P.S. - Lakhisarai, District- Lakhisarai.

.... .... Petitioner/s

**Versus**

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. Director, Primary Education, Government of Bihar.
4. District Education Officer, Lakhisarai.
5. District Program Officer, Establishment, Lakhisarai
6. District Treasury Officer, Lakhisarai
7. Drawing and Disbursing Officer, Upgraded Middle School, Mahisona, Lakhisarai.



.... .... Respondent/s

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**Appearance :**

(In CWJC No.22168 of 2013)

For the Petitioner/s : Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. Brajesh Kumar, A.C. to A.A.G.-IV

(In CWJC No.1152 of 2015)

For the Petitioner/s : Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. Md. N.Hoda Khan, S.C.-01

: Mr. Harun Quareshi, A.C. to S.C.-01

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 18-01-2017**

The facts and laws involved in these two writ applications filed by the petitioner are mostly common. Hence, they have been heard together and are being disposed of by a common order.

2. C.W.J.C. No.22168 of 2013 has been filed by the petitioner for quashing of the order bearing memo no.581 dated 1<sup>st</sup> March, 2013 passed by the District Programme Officer, Establishment, Lakhisarai whereby and whereunder full pension of the petitioner has been withheld in terms of Rule 43(b) of the Bihar Pension Rules, 1950 (for short 'the Pension Rules') and the petitioner has been directed to deposit the amounts illegally withdrawn by her under the head salary and for building construction in government treasury.

3. C.W.J.C. No.1152 of 2015 has been filed by the



petitioner for issuance of direction on the respondents to pay her retiral dues, namely, amount of general provident fund, group insurance, leave encashment, arrears of pension etc.

4. The petitioner herein, who was appointed on the post of Assistant Teacher and retired on attaining the age of superannuation on 31<sup>st</sup> July, 2012 while working as Incharge Headmistress at Upgraded Middle School, Mahisona, Lakhisarai, was served with charge-sheet vide memo no.52 dated 10<sup>th</sup> January, 2013 alleging that she had been appointed on the basis of forged certificate and had misappropriated government money in construction of school building by abusing her official position and had illegally spent public money by demolishing existing building of the school and constructing new building. It was also alleged that having not run the school in proper manner she had played with the future of the students.

5. The Block Development Officer, Suryagarha was made the enquiry officer and the Block Education Officer, Lakhisarai was made the presenting officer in the aforesaid disciplinary proceeding to be held against the petitioner. The petitioner was directed to submit her explanation within a fortnight from the date of receipt of the aforesaid memo no.52 dated 10<sup>th</sup> January, 2013.

6. The petitioner submitted her reply to the aforesaid charge memo which was prepared under five heads on 23<sup>rd</sup> January,



2013 before the enquiry officer. After going through the reply, the enquiry officer submitted his report in which most of the charges levelled against the petitioner were found to be proved whereafter the District Programme Officer, Establishment issued an order of punishment dated 1<sup>st</sup> March, 2013 against the petitioner under Rule 43(b) of the Pension Rules whereby the petitioner has been debarred from all retiral-cum-pensionary benefits and has been directed to return the amount withdrawn by her as salary, as also for construction of building in the government treasury.

7. Mr. Praveen Kumar, learned counsel for the petitioner would submit that the petitioner was appointed on the post of teacher by the District Superintendent of Education, Munger on 25<sup>th</sup> March, 1976. She submitted her joining at Upgraded Primary School, Phulhat, Bariyarpur, Munger on 1<sup>st</sup> April, 1976. Since then she regularly discharged her duty and her entire service career was blotless. She retired on attaining the age of superannuation on 31<sup>st</sup> July, 2012 while working as Incharge Headmistress at Upgraded Middle School, Mahisona, Lakhisarai. After retirement, she submitted duly filled in pension paper before the competent authority, but pension payment order was not issued by the respondents.

8. Mr. Praveen Kumar, learned counsel would submit that no list of documents or list of witnesses were ever supplied to the



petitioner along with charge memo and the petitioner was compelled to file her reply in absence of documents relevant to the charges. He would submit that no enquiry was conducted during disciplinary proceeding and only on the basis of written statement of defence filed by the petitioner, the impugned order of punishment has been passed.

**9.** He would further submit that the disciplinary proceeding was not conducted in accordance with law and the respondents deliberately violated the mandatory provision of law as contained in proviso (a)(i) and (iii) of Rule 43(b) of the Pension Rules. He would submit that the State Government has not sanctioned the initiation of disciplinary proceeding against the petitioner. Similarly, the proceeding was not held in the manner in which an order of dismissal from service could have been made. He would submit that the order of dismissal is also bad for the reason that copy of the enquiry report was neither served upon the petitioner nor any second show cause notice was issued to the petitioner before passing the impugned order.

**10.** The State has contested the matter and filed its counter affidavit and supplementary counter affidavit. In the supplementary counter affidavit, it has been admitted that no sanction of the State Government was obtained and the proceeding under Rule 43(b) of the Pension Rules was initiated by the District Programme Officer, Establishemnt, Lakhisarai on his own.



**11.** Mr. Brajesh Kumar, learned Assistant Counsel to learned Additional Advocate General No.4, appearing on behalf of the State also conceded that no sanction of the State Government was obtained and the proceeding under Rule 43(b) of the Pension Rules was initiated against the petitioner by the District Programme Officer, Establishment, Lakhisarai. He also conceded that memo of charge does not contain list of documents and list of witnesses to be examined in support of the charges. He conceded that neither witnesses were examined during enquiry nor any document was exhibited in course of enquiry proceeding.

**12.** He would contend that second show cause notice was issued to the petitioner to which she did not respond. He would contend that for initiation of disciplinary proceeding after retirement from service obtaining sanction of the State Government is not a mandatory requirement. He would also contend that the proceeding was initiated against the petitioner in accordance with law and the charges levelled against her were found to be proved. He would submit that the petitioner has been visited with the order of punishment, which is commensurate to the charges levelled against her. He would also contend that for the alleged act of omission and commission, an FIR has also been instituted against the petitioner.

**13.** Learned counsel for the State has also produced the



original record relating to departmental proceeding conducted against the petitioner pursuant to the order passed by this Court.

**14.** I have heard either side and examined the various contentions raised by them. I have also perused the original record relating to departmental proceeding conducted against the petitioner.

**15.** In order to properly appreciate and examine the various contentions advanced before the Court, firstly it is necessary to examine the relevant provisions of the Pension Rules, as pension and gratuity of the employees of the State Government are governed by the said Rules.

**16.** Rule 43(b) of the Pension Rules authorizes the State Government the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss to the government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

**17.** Rule 43(b) of the Pension Rules reads as under:

*“Rule 43(b). The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have*



*caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:*

*Provided that –*

- (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;*
- (i) shall not be instituted save with the sanction of the State Government;*
- (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and*
- (iii) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;*
- (b) judicial proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and*
- (c) the Bihar Public Service Commission, shall be consulted before final orders are passed.*

*Explanation.- For the purpose of the rule-*

- (a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and*
- (b) judicial proceedings shall be deemed to have been instituted:-*
  - (i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and*
  - (ii) in the case of civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to a civil court”.*

**18.** It would be evident from perusal of proviso (a)(i) to



Rule 43(b) of the Pension Rules that departmental proceeding, if not instituted while the government servant was on duty either before retirement or during re-employment shall not be instituted save with the sanction of the State Government.

**19.** Further, proviso (a)(iii) of Rule 43(b) of the Pension Rules mandates that departmental proceeding shall be conducted by the authority in accordance with the procedure applicable to a proceeding on which an order of dismissal from service may be made. After looking at the relevant provisions of the Pension Rules, it would also be appropriate to take into consideration relevant rules of The Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for short 'C.C.A. Rules, 2005'). Rule 14 of the C.C.A. Rules, 2005 describes minor and major penalties. Dismissal from service is one of the major penalties prescribed under the aforesaid Rule 14.

**20.** Rule 17 of the C.C.A. Rules, 2005 provides the procedure for imposing major penalties. The aforesaid Rule 17 is extracted hereunder:-

***17. Procedure for imposing major penalties .-***  
*(1) No order imposing any of the penalties specified in clauses (vi) to (x) of rule 14 shall be made without holding an inquiry, as far as may be, in the manner provided in these Rules.*

*(2) Wherever the disciplinary authority is of the opinion that there are grounds for inquiring*



*about the truth of any imputation of misconduct or misbehaviour against a government servant, he may himself inquire into it, or appoint under these Rules an authority to inquire about the truth thereof.*

*Provided that where the Department Enquiry Commissioner is appointed as inquiring authority in such cases the Departmental Enquiry Commissioner either himself conduct the inquiry or may transfer the case of enquiry to the Additional Departmental Enquiry Commissioner. In the matter of such transferred cases of enquiry the Additional Departmental Enquiry Commissioner may forward the records of enquiry along with Enquiry report directly to the Disciplinary Authority.*

*Explanation- Where the disciplinary authority himself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) of this rule to the inquiring authority shall be construed as a reference to the disciplinary authority.*

*(3) Where it is proposed to hold an inquiry against a government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-*

*(i) the substance of the imputations of misconduct or misbehaviour as a definite and distinct article of charge;*

*(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-*

*(a) a statement of all relevant facts including any admission or confession made by the government servant;*

*(b) a list of such document by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained.*

*(4) The disciplinary authority shall deliver or cause to be delivered to the government servant a copy of the articles of charge, such statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each*



*article of charge is proposed to be sustained and shall require the government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.*

*(5) (a) On receipt of the written statement of defence, the disciplinary authority may himself inquire into such of the articles of charge which are not admitted, or, if it thinks necessary to appoint, under sub-rule (2) of this rule, an inquiry authority for the purpose he may do so and where all the articles of charges have been admitted by the government servant in his written statement of defence, the disciplinary authority shall record his findings on each charge after taking such evidence as it may think fit and shall take action in the manner laid down in rule 18.*

*(b) If no written statement of defence is submitted by the government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it thinks necessary to appoint, under sub-rule (2) of this rule an inquiry authority for the purpose, it may do so.*

*(c) where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry about such charge, it may, by an order, appoint a government servant or a legal practitioner to be known as the "Presenting officer" to present on his behalf the case in support of the articles of charge.*

*(6) The disciplinary authority shall, where it is not the inquiring authority, forward the following records to the inquiring authority-*

*(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;*

*(ii) a copy of the written statement of defence, if any, submitted by the government servant;*

*(iii) a copy of the statement of witnesses, if any, specified in sub-rule (3) of this rule;*

*(iv) evidence proving the delivery of the*



*documents specified in sub- rule (3) to the government servant; and*

*(v) a copy of the order appointing the “Presenting Officer”.*

*(7) The government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding ten days, as may be specified by the inquiring authority.*

*(8) (a) The government servant may take the assistance of other government servant posted in any office, either at his headquarter or at the place where the inquiry is to be held, to present the case on his behalf:*

*Provided that he may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary authority, having regard to the circumstances of the case, so permits:*

*Provided also that the government servant may take the assistance of any other government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing so permits:*

*Provided further that the government servant shall not take the assistance of any such other government servant who has three pending disciplinary cases on hand in which he has to give assistance.*

*(b) The government servant may take the assistance of a retired government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.*



(9) *If the government servant, who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has to say any thing for his defence and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the government servant thereon.*

(10) *The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the government servant pleads guilty.*

(11) *The inquiring authority shall, if the government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the government servant may, for the purpose of preparing his defence,-*

(i) *inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list in sub-rule (3);*

(ii) *submit a list of witnesses to be examined on his behalf:*

*Note: - If the government servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible.*

(iii) *give a notice within ten days of the order or within such further time as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list specified in sub-rule (3) of this rule:*

*Provided that the government servant shall indicate the relevance of the documents required by*



*him to be discovered or produced by the Government.*

*(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the document by such date as may be specified in such requisition.*

*Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.*

*(13) On receipt of the requisition specified in sub-rule (12) of this rule, every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority:*

*Provided that if the authority, having the custody or possession of the requisitioned documents, is satisfied, for reasons to be recorded by it in writing, that the production of all or any of such documents will be against public interest or security of the State, he shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the government servant and withdraw the requisition made by it for the production or discovery of such documents.*

*(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such*



*questions to the witnesses, as it thinks fit.*

*(15) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiring authority may, in his discretion, allow the Presenting Officer to produce evidence not included in the list given to the government servant or may itself call for new evidence or recall and re-examine any witness and in such case the government servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the government servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice:*

*Provided that new evidence shall not be permitted or called for or any witness shall not be recalled to supplement the evidence. Such evidence may be called for if there is any inherent lacuna or defect in the evidence, produced originally.*

*(16) When the case for the disciplinary authority is closed, the government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the government servant shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.*

*(17) The evidence on behalf of the government servant shall then be produced. The government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the government servant shall then be examined and they shall be liable to examination, cross-examination and, re-examination by the inquiring*



*authority according to the provisions applicable to the witnesses for the disciplinary authority.*

*(18) The inquiring authority may after the government servant closes his case, and shall, if the government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the government servant to explain any circumstances appearing in the evidence against him.*

*(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the government servant, or permit them to file written briefs of their respective case, if they so desire.*

*(20) If the government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.*

*(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in clauses (i) to (v) of rule 14 but not competent to impose any of the penalties specified in clauses (vi) to (xi) of rule 14, has himself inquired into or caused to be inquired into the article of any charge and that authority having regard to his own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in clauses (vi) to (xi) of rule 14 should be imposed on the government servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the penalties mentioned in clauses (vi) to (xi) of rule 14.*

*(b) The disciplinary authority to which the*



*records are so forwarded may act on the evidence on the records or may, if he is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the government servant such penalties as it may deem fit in accordance with these rules.*

*(22) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction the inquiring authority so succeeding may act on the basis of evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:*

*Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.*

*(23) (i) After the conclusion of the inquiry, a record shall be prepared and it shall contain:-*

*(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;*

*(b) the defence of the government servant in respect of each article of charge;*

*(c) an assessment of the evidence in respect of each article of charge;*

*(d) the findings on each article of charge and the reasons thereof.*

*Explanation- If in the opinion of the inquiring authority the proceedings of the inquiry may establish any article of charge different from the original articles of the charge, he may record his findings on such article of charge:*

*Provided that the findings on such article of charge shall not be recorded unless the government servant has either admitted the facts on which such*



*article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.*

*(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include-*

*(a) the report prepared by it under clause (i) of this sub-rule;*

*(b) the written statement of defence, if any, submitted by the government servant;*

*(c) the oral and documentary evidence produced in the course of the inquiry;*

*(d) written briefs, if any, filed by the Presenting Officer or the government servant or both during the course of the inquiry; and*

*(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.”*

**21.** The above mentioned provision would indicate that an employee can be charge-sheeted for inflicting major penalty, but no order imposing any of the major penalties can be made without holding an enquiry in the manner provided in Rule 17 of the C.C.A. Rules, 2005, which mandates that where it is proposed to hold an enquiry against a government servant, the disciplinary authority shall draw up or cause to be drawn up the substance of imputations of misconduct as a distinct and definite articles of charge, a statement in support of each article of charge which shall contain a list of such documents by which, and a list of such witnesses by whom, the articles of charge are proposed to be sustained. It further mandates for holding inquiry into such articles of charge which are not



admitted in written statement of defence. In course of inquiry, dates are to be fixed by the Inquiry Officer and on the date fixed, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced. Rule 17 gives right to the government servant facing the proceeding to cross-examine witnesses produced in support of charges. It also gives him right to adduce evidence in support of defence.

**22.** In the present case, it is an admitted position that no proceeding was initiated against the petitioner while she was in government service. The charge of memo was served upon her after she retired on attaining the age of superannuation. It is also an admitted position that proceeding has not been instituted against the petitioner with the sanction of the State Government. Since the proceeding was instituted against the petitioner without the sanction of the State Government, the same was impermissible in view of proviso (a)(iii) of Rule 43(b) of the Pension Rules.

**23.** I also find from perusal of the charge memo and the original record of the proceeding that the same do not contain any list of witnesses or list of documents by which the articles of charge were proposed to be proved. It is also an admitted fact that neither any witness was examined nor any document was produced in course of inquiry in support of the charges. From perusal of the inquiry report



it would be evident that the inquiry officer formed his opinion on the basis of the documents which were in his possession or which may have been produced before him behind the back of the petitioner. In the considered opinion of this Court the manner in which the inquiry against the petitioner was conducted cannot be approved. The entire inquiry proceeding was vitiated in law. Furthermore, the procedure adopted by the inquiry officer for conducting the inquiry was not the procedure prescribed in law by which an order of dismissal from service could have been passed.

**24.** As noticed hereinabove, the proviso (a)(iii) to Rule 43(b) of the Pension Rules would indicate that if no proceeding is instituted while the government servant was on duty either before retirement or during re-employment and if the same is instituted with the sanction of the State Government after retirement, the procedure applicable to the proceeding would be one on which an order of dismissal from service may be made.

**25.** On perusal of the original record relating to departmental proceeding conducted against the petitioner, it would further be apparent that no date was fixed during inquiry proceeding and the inquiry officer has formed his opinion on the basis of extraneous documents, which were never supplied to the petitioner.

**26.** Thus, even if I accept the contention of the



respondents that a second show cause notice was issued to the petitioner to which she did not respond, the same would not justify the action of the respondents in passing of the impugned order.

**27.** In view of the aforesaid infirmities, the entire inquiry proceeding was vitiated in law. I also find that the impugned order has not been passed by the State Government rather it has been passed by the District Programme Officer, Establishment, Lakhisarai, who had no authority to pass such order. In such view of the matter, impugned memo no.581 dated 1.3.2013 cannot be sustained in law. It is quashed accordingly.

**28.** C.W.J.C. No.22168 of 2013 stands allowed.

**29.** Since the prayer made by the petitioner in C.W.J.C. No.1152 of 2015 is consequential in nature, in view of the discussions made hereinabove, I direct the petitioner to file representation before the District Programme Officer, Establishment, Lakhisarai, within four weeks from today for payment of her post retiral dues. In case such representation is filed, the District Programme Officer, Establishment, Lakhisarai, shall be obliged to examine the same and pass necessary orders in accordance with law within six weeks from the date of receipt of representation accompanying with a copy of the order. He shall sanction the admissible post retiral dues to the petitioner within the



aforementioned time.

**30.** With the aforesaid observation and direction,  
C.W.J.C. No.1152 of 2015 is disposed of.

**(Ashwani Kumar Singh, J)**

Md.S./-

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