

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6798 of 2023

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Meena Kumari, aged about 64 years, Female, Wife of Sh. Tarkeshwar Sharma, Resident of Village- Rohua Rajaram, Post- Musahri Farm, Police Station- Musahri, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The Director (Administration-cum-Additional Secretary), Department of Education, Bihar, Patna.
5. The Regional Deputy Director of Education, Muzaffarpur.
6. The District Magistrate, Muzaffarpur.
7. The District Education Officer, Muzaffarpur.
8. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Madhaw Pd. Yadaw, GP-23
For the A.G, Bihar	:	Mr. Vivekanand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT

Date : 09-09-2024

Heard learned counsel for the parties.

2. The petitioner has filed this writ petition challenging the order dated 21.03.2022 issued by the Special Secretary-cum-Director (Administration), Education Department, Government of Bihar, Patna vide Memo No. 166, whereby 100% pension of the petitioner has been withheld under Rule 43(b) of the Bihar



Pension Rules.

3. The departmental proceeding was initiated by the Department of Education while the petitioner was working as an Senior Lecturer under Bihar Education Service (Class-II Cadre). As the petitioner retired from service before conclusion of the departmental proceeding, the departmental proceeding initiated was converted under Rule 43(b) of the Bihar Pension Rules. Upon conclusion of the departmental proceeding in terms of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the Rules, 2005”), the impugned order was passed by the respondent authorities withholding 100% pension of the petitioner.

4. Learned counsel for the petitioner has challenged the impugned order on the ground that the same has been passed by respondent authorities without conducting the departmental inquiry in accordance with Rules in a most illegal manner including framing of charge against the petitioner by incompetent authority. It is also contended by the learned counsel for the petitioner that, though, the inquiry report was in favor of the petitioner, the



disciplinary authority did not agree with the inquiry report and proceeded against the petitioner, *de hors* the law laid down by the Division Bench of this Court in L.P.A. No. 1219 of 2023.

5. Learned State counsel has pointed out that the petitioner has a remedy of filing an appeal before the appellate authority under Rule 24 of the Rules, 2005.

6. Rule 24 of the Rules, 2005 is reproduced herein below for ready reference and perusal:

*“24. Appellate Authorities – (1)
A Government Servant, including a person who has ceased to be in government service, may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by a general or special order of the Government or, where no such authority is specified:-*

(i) where such Government Servant is or was a member of Civil Service, Group-A or Group-B or holder of Civil Post, Group-A or Group-B,

(a) to the appointing authority, where the order appealed against is made by an authority, where the order appealed against is made by an authority subordinate to it; or

(b) to the Government where such order is made by any other authority;



(ii) where such Government servant is or was a member of a Civil Service, Group-C or Group-D, to the authority to which the authority making the order appealed against is immediately subordinate.

(2) There shall be no appeal against the orders of the Government, however, review petitions may be filed in the form of Memorials.

(3) Where the person, who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise, the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate or to an authority specially authorized for this purpose by the Government”

7. On perusal of Rule 24 of the Rules, 2005, it is noticed that statutory appellate authority has been provided under Rule 24 of the Rules, 2005, which has been vested with the power and jurisdiction to hear appeal preferred against the order passed by the disciplinary authority. The appellate authority has also the power to correct any illegalities, if any, committed by the disciplinary authority in passing any order.

8. Since the petitioner has an alternative remedy to



approach the appellate authority under Rule 24 of the Rules, 2005 for correction of any illegalities committed by the disciplinary authority, I am not inclined to exercise the discretionary power under Article 226 of the Constitution of India.

9. Under the circumstances, this writ petition is, hereby, disposed off with a liberty granted to the petitioner to approach the statutory appellate authority as provided under Rule 24 of the Rules, 2005.

(Nani Tagia, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11/09/2024
Transmission Date	N/A

