

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9380 of 2024**

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Kirti Kumari, Wife of Sri Shiv Kapoor Sinha, Resident of New Bypass Road,  
Harnichak Road, Near Shivam Convent School, Harnichak, Anishabad, P.O.  
and P.S.- Phulwari, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Director Administration-cum-Additional Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Accountant General, Bihar, Beer Chand Patel Road, Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bipin Bihari Singh, Advocate  
For the Respondent/s : Mr. AC to AG  
For the Accountant General : Mr. Arun Kumar Arun, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 13-08-2024**

Heard Mr. Bipin Bihari Singh, learned Advocate for  
the petitioner and learned Advocate for the State as well as  
learned Advocate for the Accountant General, Bihar, Patna.

2. The petitioner is aggrieved by the notification, as  
contained in Memo No. 169 dated 21.03.2022, issued by the  
Government of Bihar, in the Department of Education  
(Annexure-P/9) whereby the petitioner has been inflicted with  
the punishment of withholding of 100% pension under Rule  
139(c) of the Bihar Pension Rules, 1950.

3. Shorn of unnecessary details, the materials



available on record suggests that on the recommendation of the Selection Committee with due process, the petitioner was appointed as an Assistant Teacher on temporary basis by the District Inspectress of School, Gaya-Nawada-cum-Aurangabad vide Memo No. 150-53 dated 16.03.1981. On being found satisfactory service and the appointment after following due process, the services of the petitioner was confirmed by the District Inspectress of School vide Memo No. 699-704, Gaya dated 17.03.1984 with effect from the date of her initial appointment. Subsequent thereto, the petitioner was also promoted in Sub-ordinate Education Service from Lower Sub-ordinate Education service w.e.f. 20.07.1985. In the meantime, by virtue of the order of the High Court, the State Government has taken a decision to merge the cadre of Sub-ordinate Service into Bihar Education Service vide Resolution, as contained in Memo No. 1209 dated 07.07.2006 and, accordingly, the petitioner has acquired the status of an Officer in Bihar Education Service. The petitioner had also been allowed the benefit of ACP w.e.f. the date of her eligibility.

4. Having worked for more than 35 years of service, finally the petitioner was allowed to superannuate from service on attaining the age of superannuation on 29.02.2016.



On being superannuated, the petitioner submitted all the necessary papers for fixation of pension and other retiral dues. Even after persuasion when the petitioner did not impress the authorities for settlement of her claim and payment of pensionary benefits, she left with no option and filed C.W.J.C. No. 17391 of 2016. While the matter was pending consideration, in the meantime, the department has initiated a proceeding under Rule 139 of the Bihar Pension Rules, 1950 by issuing a memo of charge under “Prapatra Ka”. The petitioner was asked to submit her show cause. In response thereto the petitioner submitted a detailed show-cause on 12.06.2017. The aforementioned documents have been brought on record by way of Annexures- 7 and 8 to the writ petition.

5. Taking note of the pendency of the departmental proceeding, this Court vide its order dated 27.07.2018 in C.W.J.C. No. 17391 of 2016 directed the respondent authorities to ensure retiral dues to the petitioner in terms of the order of the Full Bench in the case of **Arvind Kumar Singh Vs. The State of Bihar & Ors.**, reported in **2018(2) PLJR 933**.

6. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that the show-cause notice containing “Prapatra Ka” was issued on 29.04.2017



belatedly much after superannuation from service and in response thereto the petitioner has submitted a detailed explanation, but instead of taking any action, the department kept mum and all of a sudden came out with an order, as contained in Memo No. 169 dated 21.03.2022 inflicting with the punishment of withholding of 100% of the pension under Rule 139(c) of the Bihar Pension Rules, 1950. The impugned order reveals that in compliance with the order/direction of this Court, the appointment of Sub-ordinate Education Officers were enquired by the Central Bureau of Investigation (hereinafter referred to as 'the C.B.I.') and a report was submitted that in the appointment of the petitioner neither the advertisement was published nor the petitioner was appointed by a competent authority. There is no roster compliance and the services of the petitioner has been found to be irregular.

7. Assailing the aforementioned impugned order, as contained in Memo No. 169 dated 21.03.2022, learned Advocate for the petitioner vigorously contended that the very initiation of the departmental proceeding on the basis of the C.B.I. report, which was submitted way back in the year 2004 neither any show-cause notice was issued nor any opportunity was given to the petitioner. Moreover, the enquiry report submitted by the



C.B.I. has never ever culminated into lodging of the F.I.R. However, after 13 years, for the first time, show-cause notice has been issued after superannuation of the petitioner and despite the explanation furnished by the petitioner, the impugned order has been passed without considering the same in a most arbitrary and illegal manner.

8. Heavy reliance has been placed on a judgment rendered by the learned Division Bench of this Court in the case of **Kamini Kumari Vs. The State of Bihar & Ors. and other analogous cases (LPA No. 1219 of 2023 and others)** wherein the learned Division Bench of this Court in all such identical matters held that the State having acted in such an arbitrary manner; put the petitioners, who retired from service, to unnecessary agony, despair and prejudice by denying the entire pension for long years; which is held to be a matter of right and not a bounty paid by the State

9. On the other hand, learned Advocate for the State refuting the contention of the petitioner has submitted that the very appointment of the petitioner has been found to be irregular on an enquiry conducted by the C.B.I. It is further contended that the entire enquiry and departmental proceeding has been proceeded in pursuant to the order passed by this Court and, as



such, the action of the respondent authorities cannot be faulted, which culminated into punishment of withholding of 100% of the pension under Rule 139(c) of the Bihar Pension Rules, 1950 on being found the appointment of the petitioner as irregular.

10. This Court has carefully heard the rival contention of the parties and also perused the materials available on record. The issue raised before this Court has given a quietus by the learned Division Bench of this Court in the case of **Kamini Kumari** (supra). The Hon'ble Division Bench having minutely considered every aspect of the matter and in its penultimate paragraph held as follows:

*“48. We cannot but express our anguish, in the manner in which the inquiry proceedings were initiated and proceeded arbitrarily, flouting all procedural requirements. There were even instances of the disciplinary authority finding the individual liable to be continued, after which, again without notice subsequent inquiry report was obtained and punishment imposed. The State, being a welfare state has an obligation to its employees. The persons appointed were appointed decades back and continued in the employment of the State. Even if the CBI found some irregularities, it was for the State to meticulously examine whether such irregularities existed and if it*



*did, whether it was expedient to take action against the petitioners, especially considering the passage of time and the fact that the State had extracted work from such persons in the intervening years. There is also no complaint raised against the appellants who were teachers, teaching in various schools. There is not even one instance pointed out when their services were found to be unsatisfactory. None of them are accused of any misconduct, four years prior to their retirement, or at any time before, in their total service. The State having acted in such an arbitrary manner; put the petitioners, who retired from service, to unnecessary agony, despair and prejudice by denying the entire pension for long years; which is held to be a matter of right and not a bounty paid by the State. On the above reasoning, we are of the opinion that the State should be imposed with costs which is quantified at Rs. 5,000/- in each of the appeals, which shall be paid along with the arrears.”*

11. In view of the aforementioned settled legal position; and, the case of the petitioner is found identical to the petitioners-appellants of L.P.A. No. 1219 of 2023 and other analogous cases, this Court has left with no option, but to set aside the impugned order, as contained in Memo No. 169 dated 21.03.2022 (Annexure-P/9).



12. The writ petition stands allowed in terms of the order dated 27.02.2024 passed in L.P.A. No. 1219 of 2023 and other analogous cases.

**(Harish Kumar, J)**

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