

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11751 of 2022

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Rekha Kumari Wife of Sri Vishwa Mohan Thakur, resident of Village
Ramnagar Bishunpur, Police Station-Begusarai Town, District-Begusarai.

... .. 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 Regional Deputy Director of Education, Munger Division, Munger
- 5 . The District Education Officer, Begusarai
6. The District Programme Officer (Establishment), Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar , Advocate
For the Respondent/s	:	Mr. Madhaw Pd. Yadaw (Gp23)
		Mr. Arvind Kumar , AC to GP 23

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 21-11-2024

Re :- I. A No. 1 of 2024

1 . The instant Interlocutory Application has been
filed on behalf petitioner to add the following prayer in the
main writ application :-

(i) For the issuance of writ in the nature of certiorari
for quashing the memo No. 1494 dated 21.11.2023 by which the
petitioner has been dismissed from service stating therein that
she is only entitled for retiral benefit i. e., the GPF and Group
insurance and nothing will be paid to her in view of the



observation made in the case of Ram Kumari versus the State of Bihar and Ors. (i. e ., CWJC No. 564 of 2022 and order dated 26.09.2023 .

(ii) Petitioner also seeks permission to make correction in cause title i. e., address of the respondent Nos. 5 and 6 which is inadvertently mentioned as Munger in place of Begusarai and as such he seeks permission to correct the same .

2. Having heard the learned counsel for the petitioner and considering the averments made in the interlocutory application , I.A. No. 01 of 2024 is allowed.

Re :- CWJC No. 11751 of 2022

Heard learned counsel for the parties.

2. The present writ application has been filed for following reliefs:-

(i) For issuance of writ in the nature certiorari for quashing the 2nd Show Cause notice contained in Letter No.982 dated 18.12.2021 issued by the Regional Deputy Director of Education, Munger Division, Munger, whereby and whereunder the petitioner was directed to submit her defense statement under Rule 18 (3) of the Bihar C.C.A Rules, 2005 within fifteen days. (Annexure-13) .

(ii) For issuance of writ in the nature of certiorari quashing of the enquiry report dated 05.02.2019 by which the charges framed against the petitioner has been proved assuming the C.B.I



report to be sacrosanct as well as the entire departmental proceeding said to be initiated against the petitioner.

(iii) For the issuance of writ in the nature of certiorari for quashing the memo No. 1494 dated 21.11.2023 by which the petitioner has been dismissed from service stating therein that she is only entitled for retiral benefit i. e., the GPF and Group insurance and nothing will be paid to her in view of the observation made in the case of Ram Kumari versus the State of Bihar and Ors. (i. e. ,. CWJC No. 564 of 2022 and order dated 26.09.2023 .

3 . Learned counsel for the petitioner submitted that the factual matrix of this case is that in between the year 1984-90, large number of vacancies were existing in different Government Girls Middle Schools and it was decided by the then competent authority i.e. Inspectress of School-cum-Deputy Director of Education, Bihar, Patna to take immediate course of action for filling up vacant posts in the said Government Girls Middle School on the urgent basis. It is relevant to state here that at the that time, the District Inspectress of School/ Deputy Director of Education, Bihar was the competent authority to make such appointment under the provisions of Rule 81 & 96 read with Rule 97 of the Bihar Education Code. Accordingly, an advertisement was made in local newspaper for appointment on the post of Assistant Teachers by the then District Inspectress of



School, Begusarai in the year 1988 and the petitioner being desirous to be appointed on the said post, submitted her application before the concerned authority .

4. Learned counsel for the petitioner further submitted that after following due selection process, the petitioner was selected as an eligible candidate for appointment on the vacant post of Assistant Teacher and the appointment letter was issued on 28.02.1988 by the then competent authority and she was posted in the Government Girls Middle School, Vishnupur, Begusarai. Accordingly she made her joining in the said school at Begusarai on 29.02.1988 . After appointment petitioner was discharging her duty to the full satisfaction of all concerned, suddenly received Letter No. 2098 dated 29.07.2006 issued by the then Inspectress of School-cum-Deputy Director of Education, Bihar, Patna, by which the petitioner was asked show-cause to explain about certain points which has been mentioned and stipulated in the said letter dated 29.07.2006 that the petitioner's appointment was said to have been found irregular by the C.B.I.

5 . Accordingly , the petitioner submitted her reply on 02.09.2006 which was duly received in the office of the Inspectress of School-cum- Deputy Director of Education,



Bihar, Patna. The said explanation of the petitioner is self-contained explanation, which needs no further explanation. However, it is sufficient to state here that the petitioner has stated in her explanation in clear terms that she was registered in the employment exchange much before the year 1988 having Registration No. 224/1984 and she was appointed by a competent authority on the basis of the advertisement and interview. It was also stated that at the time when appointment was made on the said post of Assistant Teacher in Lower Sub-ordinate Service, Education Department, Govt. of Bihar, the petitioner was well within maximum age prescribed. Thus, the explanation of the petitioner was very much specific that she possessed all the requisite qualification of the said post and no any irregularity and illegality was committed. It is next submitted that the petitioner was granted First Time Bound Promotion, increment, A.C.P and other in-service benefit, meaning thereby that the service of the petitioner was found satisfactory and confirmed in view of the respective rule/government circular. on the basis of aforesaid explanation (i.e. Annexure 3) , the respondents gave her the benefit of 1st & 2nd A.C.P vide Memo No.906 dated 19.07.2014 and Memo No.907 dated 19.07.2014 w.e.f. 01.01.2009 and other in-service



benefit. In view of the aforesaid back ground. the petitioner was under impression that now the matter has been settled and she can peacefully serve the Education Department till her date of superannuation with all the legitimate benefits.

6. Learned counsel for the petitioner further submitted that all of sudden petitioner received another letter contained in Memo No. 615 dated 21.09.2016, whereby and whereunder she was once again asked to give her explanation with regard to the finding of the CBI inquiry. The petitioner again submitted her explanation dated 22.09.2016 mentioning all the facts aforesaid before the Regional Deputy Director of Education, Munger Division, Munger. The said Memo No. 615 dated 21.09.2016 was in general term and does not disclose as to why and on what basis the C.B.I opined that the appointment of the petitioner is irregular. Apart from this, the petitioner has neither been served any such report of the C.B.I. which might have found irregularity or illegality in the appointment of the petitioner.

7. It is further submitted that the petitioner submitted her representation before the Regional Deputy Director of Education, Munger Division, Munger and accordingly vide Memo No. 266, dated 17.03.2017 the



petitioner was reinstated and further vide Memo No. 1049 dated 11.11.2017 her pay scale (Pay band and grade pay) was corrected. It is further relevant to state here that at the time of reinstatement of the petitioner or granting the in-service benefits, the department has not whispered any word with regard to the initiation of a fresh departmental proceeding but after the passage of almost one year of the joining and receiving the aforesaid in-service benefits, the petitioner was put under departmental proceeding once again by the Regional Deputy Director of Education, Munger Division, Munger vide an order contained in Memo No. 1461 dated 27.10.2018 whereby and whereunder the DEO Jamui was made inquiry officer and the DPO Munger had been appointed as presenting officer in the aforesaid initiated departmental proceeding. The inquiry officer vide his order contained in Memo No. 1287 dated 17.11.2018 asked show cause from the petitioner. Accordingly the petitioner has submitted her reply on 30.11.2018 requesting therein to supply a copy of evidence on which basis the afresh appointment of the petitioner is declared as irregular.

8 . Learned counsel for the further submitted that again after passage of two and half year, the respondent RDDE, Munger all of sudden vide Letter No. 982 dated 18.12.2021 had



issued second show cause directing the petitioner to submit her defense statement within fifteen days in compliance of Rule 18 (3) of the Bihar CCA Rules, 2005, ignoring all the facts. aforementioned and without recalling Memo No. 40 dated 22.02.2019 (Annexure-12 aforesaid) which was issued by his predecessor and thereafter passed an order impugned.

9. Learned counsel or the petitioner further submitted that once the disciplinary authority vide Memo No. 40 dated 22.02.2019 (Annexure-12 aforesaid) has considered the inquiry report and found that the inquiry officer has not performed his responsibility in accordance with the provisions of Bihar CCA Rules, 2005 and in absence of evidence with regard to the charges, has recommended to the higher authority for regularization of the services and as such there was no occasion after lapses of two years once again took another a fresh stand to ask second show cause to the petitioner and others on the basis of same enquiry report. Also, in the departmental proceeding no documents with regard to the charges has been supplied to the petitioner though the same was earlier asked by the petitioner vide representation dated 30.11.2018 (Annexure-10) and thus the departmental proceeding said to be initiated against the petitioner is once again vitiated and it is in



contravention of Rule 17 and 18 of the Bihar CCA Rules, 2005. It is further relevant to submit here that the inquiry officer never asked the petitioner to submit any explanation or communicated about the next date fixed in the departmental proceeding nor any direction has been given to the presiding officer to supply the demanded documents to the petitioner. It is further submitted that no personal hearing has been afforded in compliance of the order passed in the earlier writ proceeding in which the Hon'ble Court clearly directed to afford the personal hearing of the petitioners. It is further submitted that from perusal of the enquiry report dated 5.02.2019, it is apparent that the charge has been framed against the petitioner pursuant to the findings of CBI inquiry report and no evidence in support of charge had ever been supplied to the petitioner, which is essential requirement as per the Rule 17(3) & 17 (4) of the Bihar CCA Rules, 2005 .The enquiry officer, who concluded the departmental enquiry has submitted his un-conclusive inquiry report dated 05.02.2019 (Annexure-11) stating therein that since the CBI in its Report has found that the appointment of the petitioner is irregular, hence it has been held irregular. It would be pertinent to mention here that in one identical matter bearing *W.P. No.5669 of 2018 (Sipra Rani Mallik & Ors. -vs- State of*



Jharkhand & Ors.) wherein pertaining to the C.B.I report, the C.B.I itself by filing counter affidavit before the Hon'ble High Court of Jharkhand at Ranchi admits that these appointees were not examined during enquiry and self-contained note on the basis of the available record, report had been submitted before the Government. The petitioner on reading the aforesaid show cause was surprised to know that in camouflage of C.B.I. inquiry only, the charges level against her is said to be proved, whereas the C.B.I itself in its inquiry admits that most of the relevant document were not produced before them.

10 . It is further submitted by learned counsel for the petitioner that in the initiated departmental proceeding which was quashed by this Hon'ble Court vide order dated 17.01.2017 (Annexure-5) and the second departmental proceeding initiated for the same set of charge is also hit by the other provision of law prescribed under Rule 17 (3) & 17 (4) of the Bihar CCA Rules, 2005 .

11 . Learned counsel for the petitioner further submitted that the petitioner is rendering her services as an Assistant Teacher in the Govt. of Bihar since 34 years right from year 1988 , as such the initiation of second departmental proceeding is bad in law and is fit to be quashed.



12. Learned counsel for the petitioner lastly submitted that the present writ petition is squarely covered with judgment dated 27.02.2024 passed in *LPA No. 1219 of 2023* and analogous case .

13 . Considering the facts as available on record and the submission of learned counsel for the petitioner that the writ petition is squarely covered with judgment dated 27.02.2024 passed in LPA No. 1219 of 2023 and analogous case , this writ petition is allowed, setting aside the orders as contained in the memo No. 1494 dated 21.11.2023 and Letter No.982 dated 18.12.2021 issued by the Regional Deputy Director of Education, Munger Division, Munger, and the concerned authority is directed to reinstate the petitioner and also to grant all the consequential benefits.

(Prabhat Kumar Singh, J)

Koushik/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.11.2024
Transmission Date	NA

