

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10686 of 2024

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Vijaya Kumari, Wife of Sri Ashok Kumar Sinha, resident of New Area,
Jakanpur, P.S. Jakanpur Town and District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Director, Administration cum Additional Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The District Education Officer, Patna.
5. The Treasury Officer Patna.
6. The Accountant General (A and E) Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Banwari Sharma, Advocate Mr. Shiv Kumar, Advocate
For the Respondent/s	:	Mr. Suman Kumar Jha, AC to AAG-3
For the AG, Bihar	:	Mr. Rajendra Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 21-10-2024

Heard the parties.

2. The petitioner is aggrieved by the order contained in Memo No. 455 dated 09.10.2020 issued under the signature of the Director, Administration cum Additional Secretary, Education Department, Bihar, Patna as contained in Annexure-9, whereby and whereunder the punishment of withholding of 100% pension has been inflicted against the petitioner. The petitioner also sought for a direction upon the respondents to restore her pension with effect from the date the same has been



withheld on the basis of the impugned order.

3. The short facts, which led to the filing of the present writ petition are that the petitioner was initially appointed to the post of Assistant Teacher on the basis of the recommendation made by the Selection Committee vide office order contained in Memo No. 150-53 dated 16.03.1981 issued under the signature of the District Inspector of School, Gaya-Nawada cum Aurangabad. Having been found her services to be satisfactory, the same was confirmed vide Memo No. 699-704 dated 17.05.1984. It is also contended that while the petitioner was serving as an Assistant Teacher, she was promoted in Subordinate Education Service from Lower Subordinate Education Service. However, in the meantime, by virtue of the order of the High Court, the State Government has taken a decision to merge the cadre of Subordinate Service into Bihar Education Service vide Resolution, as contained in Memo No. 1209 dated 07.07.2006 and thus the petitioner has acquired the status of an Officer in Bihar Education Service. While the petitioner was posted as Principal, Government Girls High School Bankipur, Patna, in the meantime, she received a letter no. 918 dated 21.10.2016 along with the memo of charge. The memo of charge was based upon the inquiry report submitted by



the Central Bureau of Investigation (C.B.I.), wherein it has been pointed out that the appointment of the petitioner was made by the School Inspectress, who was not the competent authority, apart from there being no advertisement, roster clearance of the vacancies and following the rules of reservation.

4. In response to the aforesaid memo of charge, the petitioner submitted a detailed explanation, the copy of which has been marked as Annexure-2 to the writ petition. After filing of the explanation afore-noted, the Director cum Additional Secretary, Education Department, Bihar, Patna, vide its Memo No. 893 dated 19.12.2017, appointed the Inquiry Officer and the Presenting Officer to continue with the departmental proceeding.

5. Despite the request made by the petitioner to submit all the necessary papers, the same has not been done and finally the Inquiry Officer has submitted his inquiry report before the Disciplinary Authority on 26.12.2018. None of the charges found prove against the petitioner. It would be relevant to note here that, in the meantime, the petitioner has already superannuated from her service on 30.11.2018. Taking note of the aforesaid fact, the disciplinary proceeding was converted under Rule, 43(b) of the Bihar Pension Rules, 1950 and further



the Disciplinary Authority differing with the inquiry report issued second show-cause notice to the petitioner, which was duly responded by the petitioner and finally the disciplinary proceeding culminated into passing of the impugned order inflicting withholding of 100% pension of the petitioner.

6. Learned counsel for the petitioner adverting to the aforesaid fact contended that the petitioner had superannuated on 30.11.2018 rendering an unblemished service of more than 35 years and so far the departmental proceeding is concerned, the same is based on an inquiry report submitted by the C.B.I., way back in the year 2004. Neither the inquiry report submitted by the C.B.I. has been served upon the petitioner nor on the basis of the inquiry report, any FIR has been instituted. The similar issue has been finally come up before the learned Division Bench of this Court in **L.P.A. No. 1219 of 2023 [Kamini Kumari v. The State of Bihar and Others and Other analogous cases]**, whereby the learned Division Bench vide judgment dated 27.02.2024 in its penultimate paragraph has 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.”

7. Referring to the aforesaid facts, it is thus contended that the case of the petitioner squarely covers with the judgment rendered by the learned Division Bench of this Court in **Kamini Kumari** (supra).

8. Learned counsel for the State countering the aforementioned submissions submitted that the very appointment of the petitioner is found to be wholly illegal as the same has been done without following the procedure. The Disciplinary Authority has found that the posts were neither advertised in any local newspaper nor any roster clearance of the vacancies was obtained. Moreover, the order of the Disciplinary Authority is based upon the inquiry report submitted by the C.B.I. However, learned counsel for the State does not controvert the position that the issue has travelled up to the Division Bench, wherein the learned Division Bench while setting aside the order passed by the learned Single Judge, has set aside the identical order(s) of termination and withholding of 100% pension. Learned counsel for the State lastly contended that the impugned order of punishment has been inflicted way back in the year 2020 but the petitioner has approached this Court belatedly in the year 2024.

9. Having considered the submissions advanced by



the learned counsels for the respective parties and taking note of the materials available on record, this Court finds that the case of the petitioner squarely covers by the decision of the learned Division Bench of this Court in **Kamini Kumari** (supra). Accordingly, the impugned order as contained in Memo No. 455 dated 09.10.2020 (Annexure-9) is set aside.

10. 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)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24-10-2024
Transmission Date	

