IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.398 of 2022

==

Sarswati Kumari, Wife of Sri Umesh Chandra Pandit, Resident of Kumhar Toli, Chandi Ashthan, Basudeopur, P.S.-Basudeopur, District-Munger, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat, Patna.
2. The Director, Administration-cum-Additional Secretary, Government of Bihar, Patna.
3. Sri Arshad Firoz, Deputy Secretary, Education Department-cum-Enquiry Authority, Government of Bihar, Patna.
4. The Accountant General, Bihar, Beer Chand Patel Road, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Advocate
For the Respondent/s	:	Mr. Prabhakar Jha, GP-27
For the Accountant General	:	Mr. Arun Kumar Arun, Advocate

==

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 16-07-2024

Heard the parties.

2. The petitioner is aggrieved by the order as contained in Memo No. 50 dated 02.02.2021, issued under the signature of Director, Administration-cum-Additional Secretary, Education Department, Government of Bihar by which 100 per cent pension has been withheld in a departmental proceeding under Rule 43 (B) of the Bihar Pension Rules, 1950.

3. The petitioner was initially appointed in the year 1982 under Lower Subordinate Education Service and consequently promoted in Subordinate Education Service with due process. By virtue of the order of the High Court in CWJC

No. 12122 of 1998 and in LPA No. 65 of 2003, the State Government has taken a decision to merge the cadre of Subordinate Education Service into Bihar Education Service vide resolution in Memo No. 1209 dated 07.07.2006 and accordingly, the petitioner has acquired the status of an Officer in Bihar Education Service vide memo no. 1751 dated 09.10.2006. It is also the contention of the petitioner that subsequent thereto, the petitioner was allowed the benefit of ACP vide memo no. 410 dated 22.03.2007 with effect from 17.05.2002.

4. However, while the petitioner was discharging her duty without any interruption, in the meantime, vide Letter No. 916 dated 21.10.2016, a memo of charge has been served upon the petitioner under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as Rules, 2005), alleging her appointment to be an irregular appointment.

5. The petitioner was asked to submit her show-cause reply. In response thereto, the petitioner submitted a detailed show-cause reply and asked for her exoneration from the charges. The departmental proceeding thereafter, did not proceed any further and subsequent thereto, the petitioner was allowed to superannuate on 30.11.2017, after attaining the age

of superannuation.

6. On superannuation of the petitioner, she was allowed all her retiral benefits and the pension was also started. Much after the retirement of the petitioner, again the Director Administration-cum-Additional Secretary, Education Department, Government of Bihar had issued letter bearing Memo No. 146 dated 20.03.2020, initiating a departmental proceeding under Rule 43(B) of Bihar Pension Rule regarding her irregular appointment by issuing another “Prapatra Ka”.

7. The petitioner being aggrieved preferred CWJC No. 7816 of 2020 along with other similarly situated person questioning the initiation of departmental proceeding. While the writ petition was pending consideration and State was called upon to file response, in the meantime, the concerned respondents concluded the departmental proceeding and passed the final order as contained in Memo No. 50 dated 02.02.2021, withholding 100 per cent of pension under Rule 43 (B).

8. While assailing the impugned order, learned Advocate for the petitioner contended that the very initiation of the departmental proceeding is on the basis of a CBI report, which was submitted way back in the year 2004. The CBI submitted its report along with recommendation in respect of altogether 305 teachers wherein, appointment of 27 teachers

was found to be regular and appointment of 278 teachers was found to be irregular and the petitioner is also said to be a teacher, whose appointment is found to be irregular. It is the contention of the petitioner that despite the discreet investigation and submission of the report of the CBI, at no point of time, the petitioner has served with a show-cause notice or any opportunity was granted and all of a sudden, after 13 years, first time the show-cause notice has been issued and after the superannuation of the petitioner, this impugned order came to be passed.

9. Heavy reliance has been placed on a judgment rendered by the 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)***, wherein this Court while considering the legality of the judgment passed by the learned co-ordinate Bench in identical matter negativing the claims of the petitioner, has reversed the judgment of the learned Single Judge and allowed the appeal.

10. On the other hand, learned Counsel for the State while refuting the contention of the petitioner has submitted that in the inquiry report submitted by the Central Bureau of Investigation, the appointment of the petitioner has been found to be irregular. The report clearly suggest neither the

advertisement has been published nor the petitioner was appointed by a competent authority. It is also contended that in the year 2016, a PIL has been filed bearing CWJC No. 10002 of 2016, wherein the learned Division Bench of this Court has directed the authorities of the Education Department to file an action taken report on the CBI report and thus, the proceeding has been initiated and after giving proper opportunity of hearing, the departmental proceeding culminated into withholding of 100 per cent of pension under Rule 43 (B) of the Bihar Pension Rules, 1950.

11. This Court has carefully gone through the materials available on record and also heard the rival contention of the parties. The identical issue has already been set at rest by the learned Division Bench of this Court in LPA No. 1219 of 2023 and other analogous cases, wherein the Court has held as follows:

> *"31. We have to notice the Explanation to Rule 43 which saves the application of the requirement, as per the proviso to the Rules for sanction or for the misconduct to be one committed within four years prior to retirement. The Explanation deems valid, any disciplinary proceeding instituted by framing of charges or by putting the Government servant under suspension, from an earlier date, as properly instituted from that earlier date. The appellants were not suspended before retirement. Though, disciplinary proceedings were initiated prior to retirement, the punishment imposed was set*

aside. De novo proceedings were permitted but despite opportunity so to do prior to retirement was available, no such proceedings were initiated till their retirement. The subsequent proceedings initiated hence, had to comply with the proviso to Rule 43(b). The proceedings are found to be illegally initiated and hence, the order of punishment also is liable to be set aside.

41. We cannot but deprecate the manner in which the inquiry proceedings were initiated by the State Government. True there was a CBI inquiry initiated in the PIL, in the course of which the petitioners were not at all examined or given an opportunity to put up their defence. The report of the CBI was filed in the year 2004 when all the petitioners were in service. Even then if a disciplinary proceeding had been taken, it would have been grossly delayed since the appointments were made in 1980's. We cannot but refer to the decisions of the Hon'ble Supreme Court passed in Civil Appeal No. 1328 of 1995 ***Union of India Vs. Kishori Lal Bablani*** *reported in* ***AIR 1999 SC 517*** *and* ***P. V. Mahadevan Vs. M.D. Tamilnadu Housing Board*** *reported in* ***AIR 2006 SC 207****. In* ***Kishori Lal Bablani (supra)****, the ground raised by the appellants that in a writ petition filed in the year 1985, appointments made as far back as in the year 1974 ought not to have been disturbed was accepted. In the case of* ***P. V. Mahadevan (supra)*** *there was delay of 12 years in initiating disciplinary proceedings, upon which the charge memo itself was set aside. Here, the appointments made in the CBI were continued for long and even after a CBI report was submitted to the Court; the further action took another 14 years, i.e. commenced in 2016. With respect to the appeals first considered, it was again much later. We also have to observe that in the inquiry conducted, no witnesses were examined. The CBI report relied on was also not marked and proved through an officer who conducted the investigation.*

42. At the risk of repetition, it has to be stated that the appointments made in the year 1981, 1988 and 1989 were subjected to a CBI inquiry, the report of which was filed in the year 2004. Apparently no FIR was lodged and the reports submitted remained with the State Government, without any further action. It was long after, in the year 2016 that a Public Interest Litigation motivated the State Government into taking action. The order in the PIL only directed the State Government to take proceedings in accordance with law. We have found that the State Government had flouted all principles of fairness in disciplinary inquiry and also violated the specific rules of procedure as brought out under Article 309 of the Constitution of India.

43. Less said the better about the manner in which the inquiry was conducted. The memo of charges only contained the extract of the CBI report pointing out the alleged irregularity, as against the appointment of the individual petitioners. There was none examined at the inquiry nor documents marked. The extract of the CBI report could have been marked and proved only by the person who prepared the report or another officer of the CBI, who could depose on the basis of the records. This procedure was not followed and the inquiry officer did not independently consider the irregularity in appointment alleged.

44. On how a valid disciplinary inquiry, a quasi-judicial proceeding is to be conducted, we have to refer to ***Roop Singh Negi v. Punjab National Bank*** *reported in* ***(2009) 2 SCC 270****. We extract para 14 of the said decision, which applied on all fours:-*

> *14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty*

to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence."

12. In view of the aforesaid settled legal position, this Court has left with no option, but to set-aside the impugned order as contained in Memo No. 50 dated 02.02.2021, contained in Annexure-6. The writ petition is allowed in terms of the order dated 27.02.2024, passed in LPA No. 1219 of 2023.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2024.
Transmission Date	NA