IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1260 of 2023
In
Civil Writ Jurisdiction Case No.10022 of 2019

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Neelam Kumari Wife of Shri Narendra Kumar Sinha Resident of Neelam Bhawan, Panchwati Colony, P.S.- Beur, District- Patna, Pin- 800002.

... ... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Bihar, Patna.
2. Director, Secondary Education, Education Department, Bihar, Patna.
3. Director (Administration)- cum -Additional Secretary, Education Department, Bihar, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 1262 of 2023
In
Civil Writ Jurisdiction Case No.16482 of 2021

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Shashi Kala Prasad Wife of Shri Awadhesh Kumar Resident of Late Banwari Sharan, Damaria, P.O. and P.S.- Gardanibagh, District- Patna, Pin Code-800002.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Director, Primary Education, Bihar, Patna.
3. Regional Deputy Director of Education, Patna Division, Patna.
4. District Education Officer, Patna.
5. District Programme Officer (Establishment), Patna Division, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 1263 of 2023
In
Civil Writ Jurisdiction Case No.16457 of 2021

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Abha Rani wife of Shri Prit Ranjan Shrivastava, resident of Shanti Niwas, West of Shalimar Cold Storage, New Harnichak, Phulwari, District- Patna, Pin Code-800002

... ... Appellant/s

Versus

1. The State of Bihar Through the Principal Secretary, Education Department, Bihar, Patna
2. The Director, Primary Education, Education Department, Bihar, Patna
3. Regional Deputy Director of Education, Patna Division, Patna
4. District Education Officer, Patna
5. District Programme Officer (Establishment), Patna Division, Patna

... ... Respondent/s

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with

Letters Patent Appeal No. 1264 of 2023

In

Civil Writ Jurisdiction Case No.16446 of 2021

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Ranju Bala Sharan Wife of Shri Birendra Kumar Sinha, resident of Koiri Tola, Dariyapur, P.O.-Bankipore, P.S.-Pirbhore, District-Patna, Pin Code-800004.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. Director, Primary Education, Bihar, Patna.
3. Regional Deputy Director of Education, Patna Division, Patna.
4. District Education Officer, Patna.
5. District Programme Officer (Establishment) Patna Division, Patna.

... ... Respondent/s

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with

Letters Patent Appeal No. 1265 of 2023

In

Civil Writ Jurisdiction Case No.7808 of 2023

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Bibha Rani @ Vibha Rani W/o Shri Rakesh Kumar Singh, R/o Professor Colony, Aghoriya Bazar, Madhu Niketan (Near LNT College) Muzaffarpur, District-Muzaffarpur, Bihar-842001.

... ... Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.

2. The Disciplinary Authority-cum-the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
3. The District Education Officer, Muzaffarpur-cum-the Enquiry Officer.
4. The District Programme Officer (Establishment) Muzaffarpur-cum-the Presenting Officer.

... ... Respondent/s

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with

Letters Patent Appeal No. 1268 of 2023
In
Civil Writ Jurisdiction Case No.6361 of 2023

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Shubhra Rani W/o Abinash Kumar Srivastava, Chetna Nageshwar Lane, North of I.T.I. Kalambagh Road, Muzaffarpur, Bihar-842001.

... ... Appellant/s

Versus

1. The State of Bihar Through the Chief Secretary, Govt. of Bihar, Patna.
2. The Disciplinary Authority-cum-the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
3. The District Education Officer, Muzaffarpur - cum - the Enquiry Officer.
4. The District Programme Officer (Establishment), Vaishali - cum -the Presenting Officer.

... ... Respondent/s

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Appearance :

(In Letters Patent Appeal No. 1260 of 2023)

For the Appellant/s	:	Mr.Abhinav Srivastava, Advocate Mr. Raushan, Advocate
For the Respondent/s	:	Mr.Sarvesh Kumar Singh, AAG 13

(In Letters Patent Appeal No. 1262 of 2023)

For the Appellant/s	:	Mr.Abhinav Srivastava, Advocate Mr. Pushkar Bhardwaj, Advocate Mr. Raushan, Advocate
For the Respondent/s	:	Mr.Vinay Kirti Singh, GA 2

(In Letters Patent Appeal No. 1263 of 2023)

For the Appellant/s	:	Mr.Abhinav Srivastava, Advocate Mr. Pushkar Bhardwaj, Advocate Mr. Raushan, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh, AAG 13

(In Letters Patent Appeal No. 1264 of 2023)

For the Appellant/s	:	Mr.Abhinav Srivastava, Advocate Mr. Pushkar Bhardwaj, Advocate Mr. Raushan, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh, AAG 13

(In Letters Patent Appeal No. 1265 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate Mr. Narendra Kumar Sinha, Advocate Mr. Bishwash Vijeta, Advocate Mr. Jitendra Acharya, Advocate Mr. Jitendra Acharya, Advocate Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh, AAG 13

(In Letters Patent Appeal No. 1268 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate Mr. Narendra Kumar Sinha, Advocate Mr. Bishwash Vijeta, Advocate Mr. Jitendra Acharya, Advocate Mr. Jitendra Acharya, Advocate Mr. Avanindra Kumar Jha, Advocate
For the State	:	Mr.Sarvesh Kr. Singh, AAG 13

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-04-2024

The present appeals are similar to that disposed of in LPA No. 1219 of 2023 **(Kamini Kumari & Ors. Vs. The State of Bihar & Anr. & its analogous cases)**. The writ petitions from which the appeals arise, were cases in which the challenge was to the domestic enquiry proceedings initiated against teachers appointed long back, on allegations of their appointments having been made irregularly. The enquiries concluded with termination, some of which orders were once successfully challenged before this Court and again the very same consequence was visited on the teachers who were still in service; after a *de novo* proceedings as permitted by this Court.

As against those who had retired; 100% of their pensions were withheld on the conclusion of enquiry proceedings. The domestic enquiry proceedings were initiated on the ground that the teachers who were the petitioners and the appellants, were appointed irregularly between 1980 to 1990.

2. In the earlier batch of writ petitions, it was noticed that in the year 1998 by reason of an order dated 18.12.1998 passed in a Public Interest Litigation; CWJC No. 9847 of 1998 (Brajesh Kumar Sinha and Ors Vs. the State of Bihar and Anr), there was a direction to the Central Bureau of Investigation to carry out investigation into the alleged irregular appointments. The CBI submitted its report on 09.11.2004 before the Chief Secretary, State of Bihar; but no FIR was registered or any criminal proceedings were initiated. The Government slept over the matter despite receipt of the CBI report. In the year 2016, another PIL was filed numbered as ***CWJC No. 10002 of 2016 (Kaushal Kumar Vs. the State of Bihar and Ors)*** in which the State was called upon to apprise this Court as to what transpired after the CBI enquiry report was filed. This led to a spate of domestic enquiry proceedings which were carried out in total violation of the principles of natural justice and also absolute disregard of the principles governing domestic enquiries; as

enjoined upon in the Bihar (Classification Control and Appeal) Rules as also the Bihar Pension Rules.

3. A number of writ petitions were filed and a group of them in ***Shanti Kumari Vs. State of Bihar (CWJC No. 17904 of 2016)*** were disposed of on 17.01.2017 finding that the petitioners, therein, who were teachers were deprived of a reasonable opportunity to canvass their respective cases, produce relevant documents and also the binding authorities relating to domestic enquiries. The Writ Court set aside the domestic enquiry proceedings and the termination orders passed, but left liberty to the State to proceed *de novo* with the enquiry proceedings.

4. It is based on such liberty reserved that the proceedings were taken against a number of teachers, some of whom had retired by the time the proceedings were initiated. Others who were reinstated in service by reason of the earlier writ proceedings having set aside the termination orders, were also proceeded with. Some of the writ petitions were filed against the proceedings initiated, others against the termination orders and many against the withholding of pension after retirement; which withholding was also of 100 per cent of applicable pension.

5. This Court in ***Kamini Kumari*** *(supra)* found that the proceedings against retired employees were against Rule-43(b) and Rule-139 of the Bihar Pension Rules. Reliance was also placed on the decision of the Hon'ble Supreme Court in ***State of Bihar Vs Md. Idrish Ansari; 1995 Supp 3 SCC 6.***

6. Following the declaration in ***Md. Idrish Ansari*** *(supra)*, it was held that the right of withholding of pension or any part of it permanently or for a specified period by virtue of Sub clause-(i) and (ii) of Clause-(a) of the *proviso* to Rule 43(b) of the Bihar Pension Rules had to necessarily satisfy two requirements. One, that it can be instituted only with the sanction of the State Government and second, it can only be with respect to an event which took place not more than four years before the institution of such proceedings. All the proceedings which were taken up against the retired employees were with respect to the irregular appointments made between 1980 to 1990 far beyond the four-year period provided. There was also no sanction obtained from the State Government in any of the cases.

7. Reliance was also placed on Rule-139 which Rule was also interpreted in ***Md. Idrish Ansari*** *(supra)*. Rule-139 of the Bihar Pension Rules, is extracted hereinbelow: -

"Rule 139:-

(a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.

(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.

(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."

8. Following the forecited judgment; in ***Kamini Kumari*** *(supra),* it was held so in paragraph no. 25, which is extracted hereinbelow: -

*"**25.** We have to notice that there are two situations provided under Rule 139 as per clause (b) and clause (c), where there can be a reduction of pension. Clause (b) comes into play when the service is found to be thoroughly unsatisfactory. No such finding has been entered into any of the cases before us. Clause (c) relates to the power of revising an order of pension by the State Government, on the order being passed of any sub-ordinate authority. Therein also, there should be satisfaction, either that the pensioners service was not thoroughly satisfactory or that there was proof of grave misconduct on his part, while in service. There is no*

> *allegation of unsatisfactory service raised against any of the appellants, we recall. There is also no allegation of misconduct and what is alleged is an appointment having been obtained irregularly, which relates back to more than three decades. The disciplinary inquiry initiated itself is illegal for want of sanction and the incident complained of being far earlier to that provided under Rule 43(b); thus the initiation itself stands vitiated. The punishment imposed under Section 139(c) is also not sustainable, going by the Pension Rules. We have to set aside both the impugned orders in C.W.J.C. No.8020 of 2022."*

9. Based on the above findings, it was held so in paragraph no. 31, extracted hereinbelow: -

> ***"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."*

10. Further, it was noticed that even in the enquiry carried out, the CBI report was not produced and it was not

marked through the officer who prepared it; which alone can be valid proof of the document, even in a departmental proceeding. Mere, tabulation of the irregularity alleged against each teacher was produced but not proved in the enquiry through a witness. It was also held so, in the matter of the CBI report and the proceedings taken pursuant to it in paragraph no. 42, extracted hereinbelow: -

> *"**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."*

11. ***Roop Singh Negi Vs. Punjab National Bank; (2009) 2 SCC 570*** was specifically noticed to reiterate that departmental proceeding is a quasi-judicial proceeding, the enquiry officer perform in a quasi-judicial function and the charges levelled against the delinquent requiring to be proved. The enquiry officer, it was held had a duty to arrive at a finding based on the materials brought on record by the parties. A mere

report filed by the investigating officer cannot be treated as evidence in the disciplinary proceeding, especially when, no witness was examined to prove the documents, was the authoritative pronouncement.

12. Based on the aforesaid findings, this Court set aside the orders of terminations as also the orders of withholding pension and directed interest to be paid on failure to compute the arrears and pay the same within four months as also awarded Rs. 5000/- as cost in the individual writ petitions.

13. We additionally observe that the allegations raised in the Enquiry Report of the CBI were that, an advertisement was not issued, candidates were not sourced from the Employment Exchange, reservation roster was not followed, sanction of the Competent authority was not obtained and there was no interview; in the appointment of the teachers who were proceeded with. These are allegations against the government officers who appointed the teachers and not necessarily a misconduct committed by the newly appointed teachers. Indisputably all the teachers who had service had an unblemished record and there was nothing revealed in their service regarding their incapacity to discharge their duties or disentitlement to be so appointed.

Re.: L.P.A. No. 1260 of 2023

14. The appellant was appointed as a Matric Trained Teacher on temporary basis by an order of the Inspectress of Schools-cum-Deputy Director of Education on 13.05.1977. After termination in the year 1977, she was again re-appointed on 06.07.1981 by Annexure-3, as an Assistant Teacher in view of a policy framed by the State dated 17.04.1980. The appellant was also confirmed by Annexure-4 dated 19.12.1983 with effect from the date of her initial appointment on 08.07.1981 and was promoted, as per Annexure-6, to the Subordinate Education Service (Female Branch) on 17.05.1990. On 07.07.2006, the appellant's services were merged with the Bihar Education Service Class-II; which is evidenced by Annexure-8. The appellant was then served with a memo of charge, on the basis of the CBI report, from which one page of CBI report as relatable to the appellant, was furnished. The memo of charge is produced at Annexure-9 dated 21.10.2016 to which the appellant filed her explanation on 13.11.2016 by Annexure-10. The appellant retired from services upon attaining the age of superannuation on 31.01.2017.

15. On 23.11.2017, there was a resolution issued

deciding to convert the departmental proceeding into proceeding under Rule 43(b) of the Bihar Pension Rules, which is produced at Annexure-11.

16. An Enquiry Officer was appointed who forwarded the enquiry report, which is produced as Annexure-15 dated 31.03.2018. There is no document produced at the enquiry nor is the Investigating Officer who prepared the enquiry report, examined at the enquiry. The appellant was issued with the second show cause notice dated 11.04.2018 by Annexure-16, to which she replied by Annexure-17 dated 01.05.2018. None of the explanations furnished by the appellant was considered and in a perfunctory manner, Annexure-18 order dated 12.07.2018 was passed withholding the entire pension, gratuity and leave encashment due to the appellant.

17. Despite there being a sanction in the case of the appellant under Rule 43(b), as we noticed, it suffers from the flaw of the proceedings having been initiated with respect to an incident which happened decades back; the enquiry proceedings were also vitiated for the reasons stated in ***Kamini Kumari*** (supra). Though certain letters are referred to in the enquiry report, they are all communications after the show cause notice was issued, which has no relevance in so far as the allegation of

irregular appointment. The impugned order at Annexure-18 dated 12.07.2018 stands set aside.

18. The appellant shall be paid the entire pensionary dues, as has been directed in ***Kamini Kumari*** (supra). The interest liability shall also arise, if the dues are not paid within four months from today. In which circumstance, the liability of interest paid by the State can be recovered from whichever officer, who commits default and occasions delay. The appellant shall further be entitled to be paid Rs. 5000/- as litigation cost.

19. The appeal stands allowed.

20. Interlocutory application, if any, shall stand disposed of.

Re.: L.P.A. No. 1262 of 2023

21. The appellant, pursuant to an Advertisement issued on 24.03.1988 (Annexure-1), followed by an interview, was appointed, on temporary basis, as an Assistant Teacher in the Government Girls Middle School, Chatra (Hazaribagh) on 04.11.1988. Subsequently, the appellant was transferred to Government Girls Middle School, Patna City, Patna by Annexure-3 dated 15.09.1990 and while she was continuing there, she was served with a show cause alleging purported irregularities in the initial appointment and seeking explanation,

which was responded to by her by Annexure-4 dated 29.07.2006. Pursuant to the explanation, the appellant was issued with Annexure-5 dated 19.08.2016, which was her second show cause directing an explanation to be filed within 24 hours; threatening her appointment to be terminated, if no explanation is submitted within 24 hours presuming it to be illegal.

22. It is pointed out by the learned Counsel for the appellant that this was a communication issued in the year 2016; 10 years after the initial show cause was replied to by Annexure-4. Annexure-5 was replied to by Annexure-6 dated 23.08.2016 and by Annexure-7 dated 24.08.2016, the services of the appellant were terminated, which order of termination was set aside in CWJC No. 15713 of 2016 vide judgment dated 17.01.2017, reserving liberty to proceed afresh.

23. Pursuant to the direction of the Court, by Annexure-8 dated 16.02.2017, the appellant was reinstated in service and a fresh proceeding was initiated by Annexure-9 dated 11.04.2017, to which the appellant submitted her reply by Annexure-10 dated 03.05.2017. An enquiry was conducted which was a mere eyewash. By Annexure-11 dated 28.02.2020, the enquiry report dated 24.12.2018 along with second show

cause notice issued on 24.03.2020 was furnished to the appellant, to which also she had submitted a detailed explanation by Annexure-12.

24. The appellant superannuated from service on 31.05.2020 and later to that she was issued with an order withholding 100% pension, gratuity and earned leave encashment by Annexure-13 dated 12.07.2021, which order was challenged in CWJC No. 16482 of 2021 and the impugned order in the appeal rejected the writ petition.

25. The facts are identical and the enquiry conducted against the appellant is vitiated as found in ***Kamini Kumari*** (supra). The appeal is allowed setting aside the impugned judgment as well as Annexure-13 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service from the date she was terminated and she will be paid her entire salary and allowances till her date of superannuation. The appellant would also be entitled to pension considering her service to be continuous subject only to any other proceeding taken. The directions for payment and intrest shall be as per direction in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation cost.

26. The appeal stands allowed.

27. Interlocutory application, if any, shall stand disposed of.

<u>Re.: L.P.A. No. 1263 of 2023</u>

28. The appellant was appointed as an Assistant Teacher, on temporary basis, in the Government Girls High School, Motihari, by an order of the Inspectress of Schools-cum-Deputy Director of Education dated 28.05.1985 (Annexure-1) and subsequently, on transfer, she joined on 26.06.1985 in the Government Girls Middle School, Patna City, Patna. The appellant was granted First Time Bound Promotion after completing 10 years of service by Annexure-2 dated 20.12.1996. While she was continuing there, on 29.07.2006, she was served with a show cause notice alleging purported irregularities committed in the initial appointment and seeking explanation, which was responded to by Annexure-3. The appellant was then served with a second show cause notice dated 19.08.2016 (Annexure-5), on the basis of the CBI report finding her appointment to be irregular, from which one page of the report, as relatable to the appellant, was furnished directing an explanation to be filed and threatening her appointment to be terminated, if no explanation was submitted within 24 hours

presuming it to be illegal.

29. It is pointed out by the learned Counsel for the appellant that this was a communication issued in the year 2016; 10 years after the initial show cause notice was replied to by Annexure-3 in 2006. Annexure-5 was replied to by Annexure-6 dated 23.08.2016 and by Annexure-7 dated 24.08.2016, the services of the appellant were terminated. As per order passed in CWJC No. 15713 of 2016, order of termination was set aside and liberty was granted to the respondents to proceed afresh.

30. Pursuant to the direction, by Annexure-8 dated 16.02.2017, the appellant was reinstated in service and a fresh proceeding was initiated by Annexure-9 dated 11.04.2017, to which the appellant submitted her reply by Annexure-10.

31. The appellant superannuated from service on 28.02.2018. Thereafter on 05.01.2019, the departmental proceeding, which was being conducted against the appellant, was converted into a proceeding under Rule 43(b) of the Bihar Pension Rules.

32. Subsequently, by Annexure-11 dated 26.06.2020, the Enquiry Officer furnished the enquiry report dated 14.02.2019 along with second show cause notice issued on

31.07.2020 (Annexure-12) to the appellant, to which also she submitted a detailed explanation by Annexure-13 dated 27.08.2020 and later to that she was issued with an order withholding 100% pension, gratuity and earned leave encashment by Annexure-14 dated 16.07.2021, which order was challenged in CWJC No. 16457 of 2021 and the impugned order in the appeal rejected the writ petition.

33. The facts are identical and the enquiry conducted against the appellant suffers from the same infirmities as pointed out in the decision of this Court in ***Kamini Kumari*** (supra). The appeal is allowed setting aside the impugned judgment dated 26.09.2023 as well as Annexure-14 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service till superannuation and she will be paid her entire salary and allowances till her date of superannuation; if not already paid. The appellant would also be entitled to pension considering her service to be continuous, subject only to any other proceeding taken. The directions for payment and interest shall be as per direction in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation cost.

34. The appeal stands allowed.

35. Interlocutory application, if any, shall stand disposed of.

Re.: L.P.A. No. 1264 of 2023

36. The appellant, pursuant to an Advertisement by Annexure-1, was appointed and posted as an Assistant Teacher in the Government Girls High School, Dumka. Thereafter, the appellant was transferred to Government Girls Middle School, Patna City, Patna. On 31.07.2006, she was served with a show cause notice alleging purported irregularities committed in her appointment and seeking explanation, which was responded to by her by Annexure-5 dated 11.08.2006. Pursuant to the explanation, the appellant was issued with second show cause notice by Annexure-6 dated 19.08.2016, directing an explanation to be filed within 24 hours and threatening her appointment to be terminated, if no explanation was submitted within 24 hours presuming it to be illegal.

37. It is pointed out by the learned Counsel for the appellant that this was a communication issued in the year 2016; 10 years after the initial show cause was replied to by Annexure-5. Annexure-6 was replied to by Annexure-7 dated 23.08.2016 and by Annexure-8 dated 24.08.2016, the services of the appellant were terminated, which order of termination was

set aside in CWJC No. 756 of 2017 by judgment dated 21.02.2017 (Annexure-10) reserving liberty to take a fresh proceeding.

38. Pursuant to the direction in CWJC No. 15713 of 2016, by Annexure-9 dated 16.02.2017 the appellant was reinstated in service and a fresh proceeding was initiated by Annexure-11 dated 11.04.2017. By Annexure-14 dated 28.02.2020, the enquiry report dated 14.02.2019 along with second show cause notice issued on 24.03.2020 was furnished to the appellant, to which also she had submitted a detailed explanation by Annexure-16 dated 02.06.2020. The Disciplinary Authority-cum-Regional Deputy Director of Education, by order dated 12.07.2021 (Annexure-17) dismissed the appellant from service, which order was challenged in CWJC No. 16446 of 2021 and the impugned order in the appeal rejected the writ petition.

39. The appellant was dismissed from service and while the proceedings before this Court were pending, she has attained the age of superannuation.

40. The facts are identical and the enquiry conducted against the appellant suffers from the same infirmities as pointed out in the decision of this Court in ***Kamini Kumari*** (supra). The

appeal is allowed setting aside the impugned judgment as well as Annexure-17 order of dismissal. In such circumstances, she will be considered as continuing in service from the date of her termination i.e 24.08.2016 and would be paid the entire pay and allowances till her date of superannuation. Her pension will be computed on the basis of such continued payment of pay and allowances and she would be paid arrears of pension from the date on which she superannuated. The appellant shall be paid the entire retirement dues, as directed in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as cost.

41. The appeal stands allowed.

42. Interlocutory application, if any, shall stand disposed of.

Re.: L.P.A. No. 1265 of 2023

43. The appellant was appointed as a Laboratory-cum Workshop Assistant in the Government Girls Primary Teacher Training College, Bagodar (Giridih), by an order of the Inspectress of Schools-cum-Deputy Director of Education vide Annexure-1 dated 04.01.1985.

44. Learned counsel for the appellant submits that her appointment was made with the settled norms of appointment

and as such during her entire service period the appellant was granted all due benefits like a regularly appointed permanent employee. The appellant was granted first financial progression under the ACP scheme w.e.f. 09.08.1999 by Annexure-5 dated 30.06.2012. While the appellant was continuing in service, on 22.08.2016 by Annexure-6, she was served with a show cause notice alleging irregularities committed in her initial appointment and seeking explanation, which was responded to by the appellant by Annexure-7 dated 29.08.2016.

45. Learned counsel for the appellant submits that second show cause notice was issued without framing of memorandum of charge and even without holding a regular departmental proceeding and even without considering the factual truth and legal position, the appellant was dismissed from service. The order of dismissal was challenged in CWJC No. 15713 of 2016, which was set aside vide judgment dated 17.01.2017, reserving liberty to take a fresh proceeding.

46. Pursuant to the direction of the Court, the appellant was reinstated in service by Annexure-11 dated 20.02.2017 and pay and allowances were allowed to be paid to the appellant for the dismissal period.

47. The appellant was then served with a

memorandum of charges dated 18.01.2018 by Annexure-16 along with letter dated 19.12.2014 of the then Director (Secondary Education), Bihar and one page of CBI report as relatable to the appellant. The appellant submitted her explanation by Annexure-20 dated 26.02.2018.

48. It is submitted by the learned Counsel for the appellant that the initiation of the departmental proceeding against the appellant is in complete disregard to the provisions as contained in Rule 17(3), 17(4) and 17(5) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005; order of this Court dated 04.09.2017 passed in CWJC No. 5042 of 2017 and policy of the State Government dated 06.12.2017 as contained in Annexure-17, 18 and 19.

49. The appellant superannuated from service on 28.02.2018. On 26.04.2018 by Annexure-23, there was a resolution issued deciding to convert departmental proceeding into proceeding under Rule 43(b) of the Bihar Pension Rules after the superannuation of the appellant.

50. It is submitted by the learned counsel for the appellant that the Enquiry Officer had submitted enquiry report dated 04.08.2018, which will go to show that there was no evidence adduced whatsoever, either oral or documentary, by

the Presenting Officer before the Enquiry Officer and the Enquiry Officer held proved, all the charges against the appellant without any evidence on record.

51. Thereafter, second show cause was issued to the appellant by Anenxure 29 dated 23.11.2021 along with the enquiry report dated 06.08.2018 and in reply thereof, she had submitted a detailed explanation by Annexure-29 and later to that, without sanction from the Government, she was issued with an order withholding 100% pension, gratuity and earned leave encashment by Annexure-30 dated 16.08.2022, which order was challenged in CWJC No. 7808 of 2023 and the impugned order in the appeal rejected the writ petition.

52. The facts are identical and the enquiry conducted against the appellant sufferes from the same infirmities as pointed out in the decision of this Court in ***Kamini Kumari*** (supra). The appeal is allowed setting aside the impugned judgment dated 26.09.2023 as well as Annexure-30 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service till superannuation. The appellant would also be entitled to pension considering her service to be continuous, subject only to any other proceeding taken. The directions for payment and

interest shall be as per direction in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation cost.

53. The appeal stands allowed.

54. Interlocutory application, if any, shall stand disposed of.

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55. The appellant was appointed as an Assistant Teacher, on temporary basis, by an order of the Inspectress of Schools-cum-Deputy Director of Education dated 31.03.1989 (Annexure-4) and she joined her service in Government Girls Middle School, Dhanbad on 12.04.1989. The appellant was granted first financial progression w.e.f. 12.04.2001 by Annexure-5 dated 30.06.2012.

56. The appellant was served with a second show cause notice on 22.08.2016 on the basis of the CBI report alleging irregularities in the initial appointment and seeking explanation within three days of the receipt of the notice. Thereafter, on 26.08.2016 by Annexure-6, the appellant was dismissed from service, which order was set aside in CWJC No. 15713 of 2016, vide judgment dated 17.01.2017. Pursuant to the order of the Court, the appellant was reinstated in service by

Annexure-9 dated 20.02.2017. The appellant was then served with a memorandum of charge dated 18.01.2018 by Annexure-11 along with letter dated 19.12.2014 of the then Director (Secondary Education), Bihar and one page of CBI report as relatable to the appellant. The appellant submitted her explanation by Annexure-15 dated 03.02.2018.

57. It is submitted by the learned Counsel for the appellant that the initiation of the departmental proceeding against the appellant is in complete disregard to the provisions as contained in Rule 17(3), 17(4) and 17(5) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005; order of this Court dated 04.09.2017 passed in CWJC No. 5042 of 2017 and policy of the State Government dated 06.12.2017 as contained in Annexure-17, 18 and 19.

58. It is further submitted by the learned Counsel for the appellant that Enquiry Officer submitted enquiry report on 06.08.2018 and from perusal of which, it would evident that the Presenting Officer did not adduce any evidence for proving the charge against the appellant and the Enquiry Officer in a most mechanical, mala fide, malicious, arbitrary and illegal manner, held that the charges so levelled against the appellant are proved.

59. During the pendency of the departmental proceeding, the appellant superannuated from service on 30.11.2020. Thereafter, by order dated 19.01.2022, departmental proceeding has been converted into a proceeding under Rule 43(b) of the Bihar Pension Rules.

60. The appellant was issued with the second show cause dated 01.04.2022 by Annexure-24 along with enquiry report dated 06.08.2018, to which she replied by Annexure-25 dated 11.04.2022. None of the explanations furnished by the appellant was considered and in a perfunctory manner, Annexure-26 order dated 30.08.2022 was passed withholding the entire pension, gratuity and leave encashment due to the appellant.

61. The facts are identical and the enquiry conducted against the appellant suffers from the same infirmities as pointed out in the decision of this Court in ***Kamini Kumari*** (supra). The appeal is allowed setting aside the impugned judgment dated 26.09.2023 as well as Annexure-26 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service till her superannuation. The appellant would also be entitled to pension considering her service to be continuous, subject only to any

other proceeding taken. The directions for payment and interest shall be as per direction in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation cost.

62. The appeal stands allowed.

63. Interlocutory application, if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	03.05.2024
Transmission Date	