IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1269 of 2023
In
Civil Writ Jurisdiction Case No.2351 of 2023

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Pushpalata Sinha W/o Om Prakash Prasad, R/o Ward No. 28, Near Pani Tanki, Bari Yusufpur, Hajipur, P.S. - Hajipur, District - Vaishali, PIN - 844101.

... ... 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, Vaishali- cum-the Enquiry Officer.
4. The District Programme Officer (Establishment), Vaishali-cum-the Presenting Officer.
5. The District Education Officer, Muzaffarpur-cum-the Enquiry Officer.

... ... Respondent/s

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with

Letters Patent Appeal No. 1271 of 2023
In
Civil Writ Jurisdiction Case No.12800 of 2022

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Usha Kumari Sharma Wife of Sri Vijay Kumar Sharma Resident of Mohalla-Krishnapuri, R.N.A.R. College, Police Station-Town, District-Samastipur.

... ... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Secretary, Department of Education, Govt. of Bihar, Patna,
3. The Special Secreary-Cum-Director (Administration) Department of

Education, Govt. of Bihar, Patna.

4. The Director (Administration)-Cum-Additional-Secretary Department of Education, Govt. of Bihar, Patna.

5. The Director, Primary Education-Cum-Enquiry Officer, Education Department, Govt. of Bihar, Patna.

6. The Deputy Director, Secondary Education-Cum-Presenting Officer, Department of Education, Govt. of Bihar, Patna.

7. The Accountant General, Bihar, Patna.

8. The Treasury Officer, Samastipur.

... ... Respondent/s

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with

Letters Patent Appeal No. 1272 of 2023
In
Civil Writ Jurisdiction Case No.10338 of 2020

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Prativa Kumari W/o Krishna Deo Sharma R/o- Rajabigha, Nawada, P.O.- Shadipur, P.S. and District- Nawada, 805104.

... ... Appellant/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Bihar, Patna.

2. The Director (Administration)- cum- the Additional Secretary, Education Department, Vikas Bhawan, New Secretariat, Bihar, Patna- cum- the Disciplinary Authority.

3. The Director, Secondary Education Department, Vikas Bhawan, New Secretariat, Bihar, Patna- cum- the Enquiry Officer.

4. The Deputy Secretary, Education Department, Govt. of Bihar, Patna- cum- the Enquiry Officer.

5. The Deputy Director, Secondary Education Department, Vikas Bhawan,

New Secretariat, Bihar, Patna- cum- the Presenting Officer.

6. The C.B.I., through its Investigating Officer, Patna.

... ... Respondent/s

with

Letters Patent Appeal No. 1277 of 2023
In
Civil Writ Jurisdiction Case No.961 of 2021

Smt. Poonam Kumari W/o Late Din Mani Sharma, R/o - Kaali Bari, Nootan Nagar, near Konch House, Civil Lines, Gaya, District - Gaya.

... ... Appellant/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department-cum-the appellate Authority, Bihar, Patna.

2. The Director (Administration)-cum-the Additional Secretary, Education Department, Vikas Bhawan, New Secretariat, Bihar, Patna.

3. The Director, Secondary Education Department, Govt. of Bihar, Patna.

4. The Director (Primary Education), Education Department, Vikas Bhawan, New Secretariat, Bihar, Patna - cum- the Enquiry Officer.

5. The C.B.I. through its Investigating Officer, Patna.

6. The Senior Treasury Officer, Gaya.

7. The Accountant General, Bihar, Veer Chand Patel Path, Patna.

8. The State Bank of India, through its Branch Manager, Gaya Branch, Gaya.

... ... Respondent/s

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Appearance :

(In Letters Patent Appeal No. 1269 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh (AAG13)
For the Accountant General	:	Ms. Nivedita Nirvikar, Sr. Advocate Ms Supragya, Advocate

(In Letters Patent Appeal No. 1271 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh (Aag13)
For the Accountant General	:	Ms. Nivedita Nirvikar, Sr. Advocate Ms Supragya, Advocate

In Letters Patent Appeal No. 1272 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh (AAG13)
For the Accountant General	:	Ms. Nivedita Nirvikar, Sr. Advocate Ms Supragya, Advocate

(In Letters Patent Appeal No. 1277 of 2023)

For the Appellant/s	:	Mr.Purushottam Kumar Jha, Advocate
For the Respondent/s	:	Mr.Sarvesh Kr. Singh (AAG13)
For the Accountant General	:	Ms. Nivedita Nirvikar, Sr. Advocate Ms Supragya, Advocate

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

Date : 16-04-2024

The present appeals are similar to that disposed of in LPA No. 1219 of 2023 (***Kamini Kumari and Ors Vs. the State of Bihar and 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.: LPA No. 1269 of 2023

14. The appellant was appointed and posted as an Assistant Teacher by the order of the School Inspectress-cum-Deputy Director of Education dated 14.10.1977 in the Government Girls Middle School, Araria (Annexure-1). Subsequently, she joined in the Government Girls Middle School, Hajipur (Vaishali) on 19.11.1984 at Annexure-2. The appellant was granted First Time Bound Promotion upon completion of her 10 years of service by Annexure-3 dated 31.12.1996 and also two Financial Progressions w.e.f. 09.08.1999 and 01.12.2008 respectively by Annexure-4 dated 30.06.2012.

15. The appellant, while in service, was issued a show cause notice dated 22.08.2016 by Annexure-5, directing her to submit explanation within three days of the receipt of the notice, finding her appointment to be irregular and threatening termination. The appellant submitted her reply by Annexure-6 dated 26.08.2016. Thereafter, the appellant was dismissed from

service by Annexure-7 dated 26.08.2016.

16. It is submitted by the learned Counsel for the appellant that the said show cause notice was issued without framing charge and without holding a regular departmental proceeding against the appellant and she was dismissed from service without considering the appellant's reply, which is completely illegal, arbitrary, mala fide and malicious. The dismissal order was set aside in CWJC No. 15713 of 2016 by Annexure-8 dated 17.01.2017, restoring her services. But, liberty was reserved to the respondents to proceed afresh.

17. Pursuant to the direction, the appellant was reinstated in service by Annexure-10 dated 20.02.2017. Thereafter, a memo of charge was issued by Annexure-11 dated 18.01.2018, relating to her initial appointment, so made in 1977/1984.

18. It is submitted by the learned Counsel for the appellant that the said departmental proceeding was initiated without complying with the Rules 17 (4) and 17 (5) of the Bihar Government Servants (Classification, Control and Appeal) Rules 2005, which is against several judicial pronouncements of this Court in CWJC No. 5042 of 2016 passed on 04.09.2017 and the policy decision of the Govt. of Bihar as contained in Letter

No. 15548 dated 06.12.2017 (Annexure-14).

19. On 09.02.2018 by Annexure-17, the appellant submitted her explanation before the Respondent No. 3, who was the Enquiry Officer, with regard to the memo of charge framed against her by Annexure-11 to the connected writ petition. During the pendency of the departmental proceeding, the appellant retired from service upon attaining the age of superannuation on 31.01.2018. Thereafter, an order was issued by Annexure-18 dated 26.04.2018, deciding to convert the departmental proceeding to a proceeding under Rule 43 (b) of the Bihar Pension Rules, 1950.

20. Learned Counsel for the appellant submits that after retirement of the appellant, she was paid her post-retirement benefits i.e. Earned Leave Salary, Group Insurance Claim, GPF Claim and PPO was issued on 05.05.2018, 31.05.2018 and 12.06.2018 (Annexure-19 series).

21. Subsequently, the Enquiry Officer furnished the enquiry report Annexure-22 dated 22.02.2019 to the RDDE/ Disciplinary Authority. Pursuant to the enquiry report, a second show cause notice dated 14.08.2021 (Annexure-23) along with enquiry report dated 26.07.2021 of the Respondent No. 5, was issued to the appellant, to which also she submitted a detailed

explanation by Annexure-24 dated 17.09.2021 and Annexure-25 dated 08.12.2021 demanding the copy of the enquiry report. On 28.02.2022 by Annexure-27, the Respondent No. 5 submitted another enquiry report against the appellant, which held proved, all the charges levelled against her and later to that, the appellant was served with an order withholding 100% pension by Annexure-29 dated 31.08.2022, which order was challenged in CWJC No. 2351 of 2023 and the impugned order in the appeal rejected the writ petition.

22. 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-29 dated 31.08.2022 of withholding 100% pension. The appellant would also be entitled to pension and the entire pensionary dues shall be paid, 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.

23. The appeal stands allowed.

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

Re.:LPA No. 1271 of 2023

25. Appellant was appointed as an Assistant Teacher under L.S.S. Female Cadre on 18.08.1982 and joined on 19.8.1982. She also passed Hindi Noting Drafting Examination, held on 15.4.1984. Subsequently, the appellant was promoted to Subordinate Education Service (Female Cadre) and posted as Lecturer in Teachers Training College, where she joined on 23.07.1990. While the appellant was posted as Lecturer at District Teachers Training Institute, Kilaghat, Darbhanga, a charge memo dated 13.10.2016 along with the CBI report was issued with respect to the appellant's irregular appointment made in the year 1982.

26. A departmental proceeding was initiated on 29.12.2017 and the Enquiry Officer submitted enquiry report on 07.01.2019. During the pendency of the proceeding, the appellant had attained the age of superannuation on 31.05.2019. Thereafter, on 22.02.2022, a second show cause notice was issued under the Bihar C.C.A. Rules, 2005, which was without converting the proceedings under Rule 43(b) of the Bihar Pension Rules. The appellant submitted her detailed reply on

16.03.2022 and later to that, she was issued with an order withholding 100% pension by Annexure-1 dated 25.04.2022, which order was challenged in CWJC No. 12800 of 2022 and the impugned order in the appeal rejected the writ petition.

27. 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-1 order withholding 100% pension. The appellant would also be entitled to pension and the entire pensionary dues shall be paid, 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.

28. The appeal stands allowed.

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

<u>Re.: LPA No. 1272 of 2023</u>

30. The appellant was appointed as an Assistant Teacher by the order of the School Inspectress-cum-Deputy

Director of Education on 11.01.1984 by Annexure-1 in Rajkiya Kanya Madhya Vidyalay, Nawada and joined on 13.01.1984. The then School Inspectress-cum-the Deputy Director, Bihar Patna found the services of the appellant was adjusted against the post of Matric Trained Teacher, produced as Annexure-2 dated 01.05.1986. Thereafter, the appellant was confirmed in service from the date of her initial appointment by Annexure-3 dated 25.04.1990. She was promoted to Subordinate Education Service w.e.f. 13.01.1987 by Annexure-6 dated 13.08.1991 and also to Bihar Education Service Class-II w.e.f. 17.05.1990 by Annexure-9 dated 09.10.2006. First Financial Progression under ACP Scheme was granted to her w.e.f. 09.08.1999 by Annexure-10 dated 22.03.2007. Later on, the appellant was transferred and posted as Regional Deputy Director of Education (Primary Education, Monitoring & Training) Patna Division, Patna by Annexure-11 dated 08.10.2014 and to the District Education Officer, Gaya by Annexure-12 dated 23.11.2014.

31. While the appellant was continuing in her service, a memorandum of charge was framed and issued by the then Director, Secondary Education, Bihar, Patna in relation to the legality and validity of her initial appointment by Annexure-18 dated 22.07.2017 and directed to submit her reply. The appellant

submitted her reply dated 09.10.2017 at Annexure-19.

32. Learned Counsel for the appellant submits that the Director, Secondary Education, Bihar, Patna is not competent to frame charge against the appellant since he was neither the Disciplinary Authority nor had he been directed or authorised by the Disciplinary Authority to frame the memorandum of charge against the appellant. Finding that there is no infirmity in the matter of her initial appointment as an Assistant Teacher under LSS Cadre in 1984, the Respondent No. 2 granted promotion to the appellant in the cadre of Bihar Education Service Class–I, by Annexure- 22 dated 21.06.2018.

33. A disciplinary proceeding was initiated by the Respondent No. 2 against the appellant on 20.09.2018 by Annexure-22, wherein Enquiry Officer and Presenting Officer were appointed. The appellant submitted a detailed reply before the Enquiry Officer on 19.11.2018, wherein the appellant had requested the Respondent No. 4 for supplying the documents. Despite the request made, no documents were supplied.

34. It is submitted that the action of the Respondent No. 2 in initiating the departmental proceeding in relation to the alleged irregularity in appellant's appointment, so made in the year 1984, i.e. after passing of about 34 years of the initial

appointment of the appellant and more so, upon extending all due benefits of a regular employee to the appellant, including her promotion to the cadre of Bihar Education Service Class -I, is hopelessly time barred. Further, during the entire departmental proceeding, the Presenting Officer did not adduce any evidence against the appellant for the purpose of proving the charges so levelled. In fact, the Enquiry Officer did not hold a proper and effective departmental proceeding as was required to be held under the provisions of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 and submitted the enquiry report dated 08.04.2019.

35. A second show cause Notice was served to the appellant by Annexure-27 dated 18.04.2019, directing her to submit reply, to which she filed reply on 16.05.2019 by Annexure-28. Later to that, the appellant has been dismissed from service by Annexure 29 dated 17.03.2020.

36. The order of dismissal was challenged in CWJC No. 10388 of 2020 and the impugned order in the appeal rejected the writ petition.

37. The appellant was dismissed from service and while the proceedings before this Court were pending, she had attained the age of superannuation on 31st January, 2021.

38. 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-29 order of dismissal dated 17.03.2020. In such circumstances, the appellant will be considered as continuing in service from the date of her dismissal i.e 17.03.2020 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 as well as interest as has been held in *Kamini Kumari(supra).*

39. The appeal stands allowed.

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

Re.: <u>LPA No. 1277 of 2023</u>

41. The appellant was appointed as an Assistant Teacher in Rajkiya Kanya Madhya Vidyalay, Aurangabad by Annexure-1 dated 14.05.1984 w.e.f 01.06.1984. She was

granted promotion from Lower Subordinate Service to Subordinate Education Service vide memo 06.09.1990; and again to Subordinate Education Service Cadre vide memo dated 09.07.1991 and by Annexure-6. The appellant was promoted to Bihar Education Service Class-II by order dated 09.10.2006 (Annexure-7). The appellant was granted Financial Progression under the ACP Scheme w.e.f. 17.05.2002 by Annexure- 8 dated 22.03.2007.

42. Based on the CBI report holding the appointment of the appellant to be irregular, a memorandum of charge dated 13.10.2016 was framed by the Respondent No. 3, which is produced at Annexure –10. The appellant submitted her reply and raised the issue of non - supply of the charge memo and the evidences, by Annexure –11 dated 02.11.2016 and also denied the charges so leveled against her by Annexure-13 dated 17.11.2016. Pursuant to the memo of charge so farmed, a regular departmental proceeding was ordered to be initiated by Annexure 14 dated 20.12.2017 in which the appellant participated on 29.06.2018 and 13.08.2018.

43. It is submitted by the learned Counsel for the appellant that during the entire departmental proceeding, the Presenting Officer did not adduce any evidence for proving the

charges so leveled against the appellant. The Enquiry Officer submitted an enquiry report dated 24.12.2018 on 26.12.2018 by Annexure-18. During the pendency of the departmental proceeding, since the appellant was to be retired on 30.11.2018, by an order issued on 16.09.2019, the Respondent No. 2 converted the said proceeding, to one under Rule 43 (b) of the Bihar Pension Rules.

44. In view of the enquiry report dated 24.12.2018, the Respondent No. 2 issued a second show cause notice by Annexure-20 dated 16.09.2019 and in response thereto, the appellant submitted explanation by Annexure-21 dated 01.10.2019. Thereafter, the appellant was issued with an order withholding 100% pension by Annexure-23 dated 13.01.2020. The appellant filed a Statutory Service Appeal against Annexure-23 before the Appellate Authority, which was rejected on 29.09.2020 by Annexure-34 annexed in the I.A. No. 1 of 2021. Annexure-23 and Annexure-34 orders were challenged in CWJC No. 961 of 2021 and the impugned order in the appeal rejected the writ petition.

45. 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-23 dated 13.01.2020 withholding 100% pension as well as the order passed by the appellate authority dated 29.09.2020 (Annexure-34). The appellant would also be entitled to pension and the entire pensionary dues shall be paid, 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.

46. The appeal stands allowed.

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

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/--

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA