IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1319 of 2023
In
Civil Writ Jurisdiction Case No.3039 of 2020

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Shanti Kumari, Wife of Sri Virendra Prasad Singh, resident of Mohalla Biratpur, P.s. Aurangabad and District Aurangabad Bihar 824101.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Secondary Education, New Secretariat, Patna, Bihar.
2. The Director Secondary Education, Govt. of Bihar, Patna.
3. The Regional Deputy Director, Magadh Division, Gaya.
4. The District Education Officer, Aurangabad.
5. The District Programme Officer Establishment, Aurangabad.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mirtunjay Griyaghey, Advocate
For the Respondent/s : 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 : 22-04-2024

The present appeal is 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 appeal arises, 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.

14. The appellant was appointed as Assistant Teacher against the vacant post in Government Girls Middle School, Aurangabad by memo no 420-23 dated 21.07.1981(Annexure-2) in the pay scale of Rs. 240-396. She joined on 24.07.1981 in the same school.

15. Learned counsel for the appellant submits that she had rendered about 35 years of sincere service on the substantive post of Assistant Teacher and Head Mistress in officiating capacity in the said school. All of a sudden, on 26.08.2016, RDDE, Magadh Division, Gaya issued order of termination against the appellant on the ground of irregular appointment. The order of termination was challenged in C.W.J.C No. 17904 of 2016, which was set aside vide judgment dated 17.01.2017 and liberty was granted to proceed afresh.

16. The appellant superannuated from service on 31.01.2017. On 08.05.2017 by Annexure- 6, there was a resolution issued deciding to convert departmental proceeding into proceeding under Rule 43(b) of the Bihar Pension Rules after superannuation of the appellant. The said letter dated 08.05.2017 was replied to on 14.07.2018 by Annexure- 7 by the

appellant. Further, a charge memo by Annexure- 6 dated 09.09.2017 was served to the appellant which was replied on 22.10.2018.

17. The appellant filled C.W.J.C No. 3039 of 2020 for setting aside the letter bearing Memo No- 423 dated 08.05.2017 and Memo No- 1074 dated 09.09.2017, which was dismissed by the learned Single Judge by judgment dated 26.09.2023. The appeal is in challenge of the dismissal of the writ petition.

18. It has been contended by the learned Counsel for the appellant that during the pendency of the said writ she filed representation along with written reply on 08.09.2020 vide letter no. 633 dated 29.08.2020 and later to that she was issued with an order withholding 100% pension, gratuity and earned leave encashment by Annexure-9 dated 17.11.2020 issued by the RDD, Magadh Division, Gaya.

19. 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 (Annexure- 10) as well as Annexure-9 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service validly till her superannuation from the date she was

terminated and she will be paid her entire pay and allowances till her date of superannuation. The appellant would also be entitled to pension considering her service to be continuous. The directions for payment and interest shall be as per directions in ***Kamini Kumari*** (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation costs.

20. The appeal stands allowed.

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

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.05.2024
Transmission Date	