

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1354 of 2023

In

Civil Writ Jurisdiction Case No.5912 of 2023

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Smt. Usha Kiran Kumari, Wife of Sri Rajeshwar Prasad Sinha @ Rajeshwar Prasad Singh, Resident of Mathura Bhawan, House No. NY / 42, New Yarpur Road, (Janta Road), Amrudi Bagicha, P.O- G.P.O., District- Patna.

... .. Appellant/s

Versus

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

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Lala Sheshendra Narayan Rais, Advocate Mr. Shashank Shekhar Sinha, 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 : 23-04-2024

The present appeal is 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 petition from which the appeal arises, was the case 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 an Assistant Teacher Teacher on temporary basis against the vacant post on 25.08.1984 by the Inspectress of the School-cum-Deputy Director, Education Department, Patna. Later on her services were regularized in the cadre of Lower Sub-ordinate Education Service as Assistant Teacher. The appellant was promoted in the cadre of Sub-ordinate Education Service (Women) vide order dated 06.09.1990 along with other teachers w.e.f. 17.05.1990. Later, her due date of promotion in the cadre was shifted back to w.e.f. 07.09.1989 vide Memo No. 445 dated 09.07.1991 issued by the concerned authority.

15. The appellant was served with a charge memo on 21.10.2016 and she was directed to submit explanation with respect to the allegation levelled of illegal and irregular appointment, which was replied by the appellant on 15.11.2016. The appellant retired on 28.02.2017 from the post of Senior Lecturer at Government Girls' High School, Gardanibagh, Patna after attaining the age of superannuation. After superannuation,



when the retiral benefits had not been paid, departmental proceedings were initiated under the provisions of Rule 43(b) of the Bihar Pension Rules. Against this the appellant filed C.W.J.C. No. 10027 of 2017 thereafter 90% pension, Leave encashment and gratuity have been paid. It is worth mentioning here that the appellant submitted her detailed representation before the enquiry officer on 28.02.2018 and explained the facts and requested to furnish the documents which was the basis of enquiry against her, but the same has not been supplied to her.

16. During the pendency of the C.W.J.C. No. 10027 of 2017 an enquiry report dated 24.12.2018 was submitted on 26.12.2018, but no witness was examined. Second-show cause notice was issued on 28.02.2022 to the appellant and she was directed to submit her explanation with respect to the findings recorded in the said enquiry report. Thereafter the appellant submitted her reply on 15.03.2022. Pursuant to the explanation, the appellant was served Memo No.247 dated 25.04.2022 issued by the disciplinary authority, Special Secretary-cum-Director (Administration) for punishment of forfeiture of 100% pension for ever. Against the order of forfeiture of 100% pension, the appellant filed CWJC No. 5912 of 2023, which was dismissed vide judgment dated 26.09.2023 by the learned Single Judge.



17. 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-18 order of withholding 100% pension, gratuity and earned leave encashment. The appellant shall be deemed to have continued in service validly till her superannuation. The appellant would be entitled to pension considering her service to be valid and continuous. The directions for payment and interest shall be as per the directions in *Kamini Kumari* (supra). The appellant shall also be entitled to be paid Rs. 5000/- as litigation costs.

18. The appeal stands allowed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.05.2024
Transmission Date	NA

