IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 3107 of 2019
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Manju Kumari, aged about 59 years, D/o Late Sarangdhar Prasad Jamuar, resident of Mohalla-Gokul Nagar, Jaspur Road, Gumla, P.O., P.S. and District-Gumla.

.....Petitioner

Versus

1. The State of Jharkhand through its Secretary / Principal Secretary, School Education and Literacy Department, having office at Project Building, Dhurwa, Town and District-Ranchi.
2. The Director, Secondary Education, School Education and Literacy Department, Government of Jharkhand, having office at Secondary Education Directorate, MDI Building, P.O. & P.S. Dhurwa, Town and District-Ranchi
3. The Regional Deputy Director or Education, South Chotanagpur Division, Ranchi, having office at Kutchery Road, P.O.-GPO, P.S. Kotwali, Town and Dist- Ranchi.
4. The District Education Officer, Gumla, having office at P.O., P.S. District-Gumla

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Manoj Tandon, Advocate
For the State : Mr. Ranjan Kumar, A.C. to Sr.SC-I
For the Union of India : Mr. Anil Kumar, Addl.S.G.I.

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C.A.V. on 18.09.2024 **Pronounced on 07.12.2024**

The present WP(S) No. 3107 of 2019 has been filed on behalf of the petitioner for quashing and set aside the order contained in Memo No. 06/Ra.Vi.1-33/2018-2603 dated 24.09.2018 (Annexure-8), passed by the Respondent No.2, whereby petitioner has been dismissed from service after about 34 years of her service. And to also quash and set aside the Appellate Order dated 16.05.2019 (Annexure-11), passed by the Principal Secretary-cum-Appellate Authority, School Education and Literacy Department (Respondent No.1), communicated to the petitioner by Memo No.1858 dated 03.06.2019, and for

other ancillary reliefs, whereby and whereunder, the appeal preferred by the petitioner against the penalty order has been rejected. And also praying for other ancillary reliefs.

2. Heard Mr. Manoj Tandon, learned counsel for the petitioner and Mr. Ranjan Kumar, AC to Sr.S.C-I, learned counsel for the State.

3. Learned counsel for the petitioner has submitted that this petitioner was appointed by office order contained in Memo No.65-67 dated 31.1.1985. The appointment of the petitioner was made in the pay scale of Rs. 580- 860/- on the post of Matric Trained Teacher. The appointment of the petitioner was made in Government Girls Middle School, Samastipur, which now falls within the territorial jurisdiction of the successor State of Bihar.

It is submitted that her joining pursuant to the aforesaid appointment letter on 1.2.1985 before the concerned Headmistress of the Government Girls Middle School, Samastipur.

It is submitted that the aforesaid appointment of the petitioner was made as per the extant rule, which empowered the Bihar School Inspectress to make such appointment. At the time of appointment, the qualification of this petitioner was graduate. The petitioner possessing the teacher's training qualification also. The practice at the relevant point of time of appointment was to appoint the teachers from the panel of the female candidates. Since the petitioner was fulfilling all the requisite qualifications, she was appointed by the competent authority.

It is submitted that after such appointment, the

petitioner discharged her duties sincerely to the utmost satisfaction of all concerned. The petitioner, however, was transferred from the said Government Girls Middle School, Samastipur to Government Girls Middle School, Gumla, now within the territorial jurisdiction of the High Court of Jharkhand. The petitioner was transferred by Memo No.5846-5906 dated 31.12.1987 and the petitioner, thereafter, joined in the Government Girls Middle School, Gumla on 18.1.1988, after she was relieved by the Headmistress of the concerned school on 04.01.1988.

The petitioner was declared successful in the examination, which was held for passing Tribal Language Examination. This examination was held on 6.7.1991. The certificate to this effect was also given to this petitioner by Memo No. 376(ii)/Stha. dated 29.5.1992, issued by the District Establishment Deputy Collector, Gumla.

Thereafter, the petitioner was granted time bound promotion on completion of 10 years of her service, pursuant to decision taken by Bihar Education Establishment Committee. This promotion was granted in the scale of Junior Selection Grade, being Rs. 1320-2040/-. Office order to this effect was issued on 1.8.1996. In this office order, the name of this petitioner appears at serial No. 17. This promotion was effected from 1.2.1995 by way of first time bound promotion.

It is submitted that after 26 years of her service, a charge was framed against her on 30.4.2011 on the ground inter alia that the appointment of the petitioner was defective. It was alleged that the appointment was not preceded by the valid appointment process. It was further alleged that the enquiry

report submitted by the C.B.I. includes the name of this petitioner. This would be evident from order No. 1205 dated 30.04.2011 and the Memo of Charge issued by Memo No. 1182 dated 30.04.2011.

It is submitted that CBI report, was never served upon this petitioner.

It is submitted that the Enquiry Officer directed the petitioner to submit her explanation to the memo of charge, which is evident from letter No. 656 dated 18.5.2011.

Then, the petitioner submitted her reply on 17.6.2011, while denying the charge, she replied each and every points.

The second show cause notice was, thereafter, served upon this petitioner by Memo No. 1163 dated 3.5.2012. This second show cause notice mentions the enquiry report as its enclosure. But this enquiry report, however, which was submitted by the Enquiry Officer was never served upon this petitioner.

It is submitted that the copy of the enquiry report as referred to in the second show cause notice dated 3.5.2012 was never served upon the petitioner. However, the petitioner being duty bound submitted her reply to the second show cause notice on 27.7.2012.

4. Thereafter, the impugned penalty order as contained in Memo No. 06/Ra.Vi.1-33/2018-2603 dated 24.9.2018 has been passed by the Respondent No.2, by which the petitioner has been dismissed from the services.

It is submitted that during the course of departmental proceeding, not a single witness was examined to prove the charges leveled against this petitioner, and merely on the basis

of the enquiry report of CBI that too without examining the other of the report, the petitioner has been dismissed from service.

Then petitioner preferred an appeal before the Secretary, School Education and Literacy Department, Government of Jharkhand on 27.11.2018, but, however with no effect as yet.

5. It is submitted that the impugned orders passed by the respondents are in the teeth of judgment reported of the Hon'ble Supreme Court rendered in *Dr. M.S.Mudhol vs. S.D. Halegkar* reported in *(1993) 3 SCC 591* and *Buddhi Nath Chaudhary vs. Abahi Kumar* reported in *(2001) 3 SCC 328* and in the case of Roop Singh Negi vs. Punjab National Bank reported in (2009) 2 SCC 570.

6. It is submitted that the petitioner had worked for more than 28-29 years of service.

7. It is further submitted that one Viniti Prasad and Pankajni Das had filed WP(S) No. 4198 of 2019 and WP(S) No. 5990 of 2019 respectively who were similar situated with the writ petitioner and whom services were also alike the petitioner. Even now WP(S) No. 4198 of 2019 was also allowed on 25.07.2023 and WP(S) No. 5990 of 2019 was allowed on 01.11.2023 by the Coordinate Bench of this High Court (Hon'ble Mr. Justice Dr. S.N. Pathak). During course of argument learned counsel for the petitioner has produced the photocopy of the above orders passed by High Court of Jharkhand, Ranchi and the Hon'ble Supreme Court.

8. Thus, the petitioner is entitled to similar relief and hence the impugned order dated 24.09.2018 annexed as

Annexure-8 may be quashed and the petitioner may be given her arrears and all the consequential benefits. Hence, this writ petitioner may be dismissed.

9. On the other hand, learned State counsel submitted that the impugned order passed by the Respondent No.2 is fit and proper and no interference is required. It is stated that the petitioner was appointed by the Government Girls Middle School, Samastipur, on the post of Assistant Teacher in Matric Trained pay scale of Rs. 580-860 without following the proper procedure and without having the power and jurisdiction for appointment on the post of Assistant Teacher, which now falls within the territorial jurisdiction of the successor State of Bihar.

10. It is submitted that in C.W.J.C. No. 9847 of 1998, the Hon'ble Patna High Court passed an order to conduct a CBI enquiry to investigate and submit a report in respect of the subject matter of irregular appointments of several teachers.

11. It is submitted that the CBI after due investigation submitted an Enquiry report to the Director, Secondary Education, Government of Bihar vide letter no. 3371 dated 12.04.2005 which was submitted to Government of Jharkhand vide letter no. 2688 dated 18.12.2007. The CBI enquiry report detailed out the following:-

a) Out of 304 teachers who were appointed against the vacancies, 48 teachers were posted in Jharkhand.

b) The appointments made were given directly by the District Inspectress on the recommendation of the Head Master without the proper procedure of appointment.

c) There are no proceedings available on the record of the interview/written test of the Selection Committee.

d) The District Inspectress who made the appointment were incompetent having no authority to make any appointment of the State cadre posts.

e) The records of advertisement inviting the application for the post and reservation rosters issued for the appointment are unavailable and have not been brought to the notice.

12. It is submitted that thereafter the memo of charge bearing no.1182 and memo no. 1205 dated 30.04.2011 were issued by the Director, Secondary Education directing the Regional Deputy Director of South Chhotanagpur Division (hereinafter called RRDE) to conduct a departmental enquiry. The departmental enquiry was conducted by the RRDE on different dates in which the petitioner was given a fair chance to present her facts and put forth her position. After the conclusion of the enquiry, the report was submitted through letter no. 1108 dated 06.09.2011 wherein the CBI investigation report was substantiated and supported.

13. It is submitted that the CBI investigation report as well the departmental enquiry report conducted by the RRDE both observed and concluded that the appointment of the petitioner was irregular and by not following proper procedure. Thereafter, the charges were framed vide memo no.1205 dated 30.04.2011 and show cause notices were issued to the petitioner vide letter no.1163 dated 03.05.2012 and letter no. 921 dated 12.04.2013.

It is submitted that the enquiry report of the CBI clearly indicates that whose names have been mentioned at the teachers Sl. no.1- 48(N/17-18) were initially appointed in most irregular manner committing breach of Rules various of Public employment/ appointment and even violating Article 14 and 16

of the Constitution of India.

It is submitted that reply to the 2nd show-cause notices had been received in respect of 44 teachers whereas the reply of the 2nd show cause from four (4) teachers have not been received. Thus, so far as 44 teachers are concerned whose reply to the 2nd show-cause have been received in the office, and thereafter the Disciplinary Authority has passed the appropriate order(s) on the basis of the material available on record in the departmental proceedings.

14. It is submitted that on the basis of the reports and the opinion, the order dated 24.09.2018 vide memo no.2603 was issued by the Director, Education by which the Secondary petitioner's appointment was held irregular which was in violation of the procedure laid down by law and hence the services of the petitioner was terminated.

15. It is submitted that the petitioner made a representation before the Principal Secretary, Department of School Education and Literacy according to the Jharkhand Government Servant (Classification, Control and Appeal) Rules, 2016 challenging the order passed by the Director, Secondary Education.

16. It is submitted that the enquiry reports of CBI, RDDE, opinion received from the office of the Advocate General, order of the Director, Secondary Education and the documents available on the record of the petitioner, were scrutinized by the Principal Secretary, Department of School Education and Literacy (Respondent no.1). Upon scrutinizing of all the documents available on the record, the claim of the petitioner was rejected on the ground that the appointment of the petitioner was irregular without following the procedure laid

down.

17. It is submitted that the department provided fair opportunity to be heard to the petitioner by conducting a Departmental Enquiry. The first show cause notice seeking explanation in this regard was issued to the petitioner on 18.05.2011.

18. It is submitted that the second show cause notice seeking explanation in this regard was issued to the petitioner on 03.05.2012 by the respondent.

19. It is submitted that after that the petitioner had made the representation and explained her position to the concerned authorities, the Director, Secondary Education has passed an order for termination of the petitioner. Further a fair opportunity to be heard was provided to the petitioner in her appeal made to the Principal Secretary, Department of School Education and Literacy.

20. It is submitted that the department has followed a fair procedure for conducting the departmental proceedings while examining the facts of this case and after appreciating the evidence available on the record. Thus, the claim of the Petitioner that the Respondent did not follow a fair procedure or provide her an opportunity to be heard is completely baseless.

21. Learned State counsel submitted that the entire proceeding has been done in accordance with law and the order of termination is fully justified. Hence, this writ petition may be dismissed.

22. Perused from the records of this case and considered the submissions of both sides.

23. Having heard learned counsel for the both the sides

and from going through the records, it reveals that the petitioner was appointed in Samastipur then falling within the jurisdiction of District-Dharbhanga**,** in the year 1985, then they continuously worked till the year 2010 without having any complaint. However, the petitioner was served with the charge-sheet on 30.04.2011 submitted by the C.B.I alleging therein that the appointment of petitioner has been found wrong and illegal.

24. It appears that Departmental Proceeding was initiated against the petitioner and Enquiry Report was submitted against her and the Enquiry Officer held that the appointment of the petitioner was irregular. A photocopy of Enquiry Report is enclosed as Annexure-11 to this writ petition which shows that departmental proceeding was initiated against the 615 teachers including the writ petitioner and she was marked at Serial Nos. 233.

25. It further reveals neither the advertisement nor the records relating to interview and appointment of the petitioner was available in the Office of Education Department. However, the enquiry continued against the writ petitioner and after the departmental proceeding initiated against them on the basis of C.B.I. Enquiry Report. Even the Enquiry Officer has held her guilty of charges and found that appointment of the writ petitioner was irregular. Thereafter, Second Show cause notice was issued to the writ petitioner and finally their service was terminated by the Director vide impugned order dated 24.09.2018 contained in Annexure-8.

26. From the pleadings made in the Counter Affidavit by respondent, it is not properly stated that the copy of C.B.I

Report or the Chargesheet of C.B.I and the Enquiry Report were served upon the petitioner. There is nothing on record to show that the Enquiry Report as well as C.B.I chargesheet was served upon the writ petitioner.

27. It is well settled that selection of an employee cannot be questioned for not having possessed the requisite qualification and the power of the Appointment Authority, after a period of more than 20 years and the appointments made long back pursuant to a selection need not be disturbed.

28. It has been held in the case of Buddhi Nath Chaudhary and Ors. Versus Abahi Kumar and Ors. reported in (2001) 3 SCC 328 at Para 4 to 7 as follows:-

> **"Para-4:-** On the ground that the selected candidates did not possess the qualification or experience in appointment in an appropriate automobile institution registered under the Factories Act, 1948 or they did not possess driving licence, their appointments were challenged by some of the candidates who were not selected in several writ petitions. The learned Single Judge of the High Court who dealt with these writ petitions did not examine the contentions raised on behalf of the writ petitioners in the necessary detail with reference to each selected candidate but directed the Transport Commissioner to do that exercise. On appeal, the Division Bench of the High Court set aside the report sent by the Transport Commissioner pursuant to the order made by the learned Single Judge which was received during the pendency of the appeal and directed fresh consideration of the matter by the Transport Commissioner.
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> **Para-5:-** We fail to understand as to how the matter of selection and appointment to a post could have been entrusted to the Transport Commissioner when the Commission had been specifically entrusted with such a job and such Commission, which is an autonomous authority having a constitutional status, has selected the candidates whose appointments were in challenge. If the selection of these candidates was improper the same should have been set aside with appropriate directions to redo the

process of selection or at best, the High Court could have directed the Government, which is the appointing authority, to take appropriate steps in the matter. However, in the facts and circumstances of this case, we need not dilate on this aspect nor do we need to examine various elaborate contentions addressed by either side. Suffice to say that all the selected candidates, who are in employment, except one, possess necessary qualification and in regard to that one excepted candidate, it cannot be disputed that he possesses equivalent qualification. Thus the dispute narrows down to one aspect, that is, the selected candidates may not possess necessary experience which is now required to be examined by the Transport Commissioner.

Para-6:- The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup Versus State of Haryana ((1979) 1 SCC 168); District Collector & Chairman, Vizianagaram Social Welfare Residential School Society Versus M. Tripura Sundari Devi ((1990) 3 SCC 655) and H. C. Puttaswamy Versus Hon'ble Chief Justice of Karnataka High Court, Bangalore ((1991) Supp (2) SCC 421. Therefore, we must let the matters lie where they are.

Para-7:- In the special features of this case, we set

aside the order of the High Court and dismiss the writ petitions. The appeals are, therefore, allowed. No costs."

29. It has been held by the Co-ordinate Bench (Hon'ble Mr. Justice D.N. Patel, as then his Lordship was) of this Court in the case of Shankar Ghosh Versus State of Jharkhand and Others in W.P.(S) No.2469 of 2008 disposed of on 05.01.2010, at Para 4 to 6 as follow:-

> **"Para-4:-** I have heard learned counsel appearing on behalf of the respondent-State, who has submitted that it is true that the petitioner has served for much longer period, but, inquiry was conducted and it has been brought out to the notice of the Government that the present petitioner was not legally appointed and, therefore, he is not entitled for continuation in the services nor he is entitled for any retirement benefits. This aspect has been properly appreciated in the dismissal order dated 17th December, 2007 at Annexure-6 to the memo of petition. It is also submitted by learned counsel for the respondent-State that once there is illegal appointment, the petitioner cannot take the benefit of such illegal appointment. It is further submitted by learned counsel for the respondent-State that the petitioner could not present his appointment letter before the respondent authority, therefore, the order of termination passed by the Government is in accordance with facts and law and, therefore, the present petition deserves to be dismissed.
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> **Part-5:-** Having heard learned counsels for both the sides and looking to the facts and circumstances of the case, it appears that:-
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> (i) The present petitioner was appointed as a peon and has worked, as such, for 36 long years with the respondents.
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> (ii) It appears that there is service record of the petitioner with the respondents, which is also having photograph and name etc., which reveals the photograph of the present petitioner. it appears that in the service book, every year there is signature of the high ranking officer of the petitioner. If there is mis-identity of the petitioner's name and photograph, both were always there in the service book and, therefore, the contention raised by learned counsel for the respondent-State that the petitioner

was never appointed, is not accepted by this Court. The State had enough opportunity to verify it within 36 years of services.

(iii) It appears from the facts of the case that after the initial appointment, the petitioner was confirmed in the services, thereafter, looking to the efficiency of the petitioner, first time bound promotion was also given and, thereafter, the petitioner was also given second time bound promotion. When a person is given two time bound promotions, it must have been given by all verifications by the Government and, therefore, after 36 years long services, it cannot be said that the petitioner was never appointed as a peon.

(iv) It also appears from the facts of the case that from 2006, the salary of the petitioner was stopped, therefore, a writ petition bearing W.R.(S) No.3135 of 2007 was instituted by the petitioner for getting salary. The said writ petition was allowed by this Court vide order dated 5th July, 2007 and withhold salary was released. Thus, the petitioner is also getting salary for all the period, for which, he has worked. Now, when is on verge of his retirement i.e. on 31st January, 2010 after long career of his service, it cannot be said that the petitioner was not legally appointed. No action has been taken by the Government upon the high ranking officers, who have signed in the service book of the petitioner for all these years and also upon, who have given him more than one promotion.

(v) It has been held by the Hon'ble Patna High court in the case of **Kabir Mahto v. The State of Bihar**, reported in **2009 (1) PLJR 35** especially in paragraphs 7,8 and 11 as under:-

"Para-7:- The petitioner was appointed as Assistant Teacher on 23-2-1972. There is a presumption in law that when he was appointed after his eligibility, qualification, certificates, and testimonials were verified. That is further emboldened in the present case from the facts that from 1972 till 1999 none found any illegality in his appointment or quality of education imparted by him. Twenty-seven years after his appointment suddenly an issue of the illegality of the appointment is sought to be ranked up. He is then made to run to the lawyer and to the Court room and balance his budget for running his house. The casualty is to the education being imparted by him. This Court in 2003 granted liberty for an enquiry. The respondents still chose to sit over the matter.

The pronouncement of the illegality of the appointment has been made after superannuation of the petitioner. For what purpose and with what made achievement? Even this determination is contrary to elementary principles of law which is so well established by now and needs no reiteration that no man shall be condemned unheard. The respondents shoes to do exactly opposite to condemn the petitioner without hearing him. The so-called enquiry which resulted into the order dated 14-9-2004, it was never considered necessary to associate the petitioner with the same when decisions were taken on photocopies of the documents.

Para-8:- If the petitioner was an illegally appointee as is sought to be contended quite obviously it was a collusive appointment. If, it was collusive appointment, why should the petitioner suffer alone? Those who made hay while the sun shone must equally see cloudy days. If the petitioner has to be denied his arrears of salary and retiral benefits all those in the Government who were associated with the appointment of the petitioner and released all salary to him as Assistant Teacher from 1972 to 1999 are equally required to be proceeded with against departmentally or under the criminal laws of the land, as the case may be. The Counter-affidavit of the respondents is completely silent on the issue, perhaps intentionally.

Para-11:- The impugned orders dated 14-9-2004 and 20-9-2004 are quashed. The Court holds that the petitioner is entitled to his entire arrears of salary withheld from 1999 till his retirement on 30-6-2004 as also his retirement benefits. The only jurisdiction for the same would be institution of simultaneous departmental or criminal proceedings against those who dealt with his appointment and continuance from 1972 to 1999 as noticed above."

(Emphasis supplied)

From the aforesaid decision also, when any person has served for much longer period and especially as a Class-IV type of services and also when his service book is maintained by the Government coupled with the fact that such employee is confirmed and two promotions have also given, then his services cannot be terminated on the ground that he was initially not appointment in accordance with law or he has worked on somebody else's appointment letter. This type of allegation is thoroughly a baseless allegation.

(iv) The aforesaid view has also been confirmed by

> the Hon'ble Patna High court in the case of Surajmal Prasad v. The State of Bihar, reported in 2009 (4) PLJR 929.
> **Para-6:-** As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, I hereby quash and set aside the order of termination of the petitioner dated 17th December, 2007 at Annexure-6 to the memo of petition and I, hereby, direct the petitioner to work as peon with the respondents wherever he was lastly working with the respondents and all the consequential benefits including arrears of salary and such other monetary benefits and the like, will be paid to him forthwith."

30. It further transpires that some similarly situated person had filed W.P(S) No. 6023 of 2018 which was allowed on 17.02.2021 by the Co-ordinate Bench (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) of this Court.

31. It further transpires that some other similarly situated persons had also filed W.P(S) No. 4198 of 2019 and which was also allowed on 25.04.2023 by the Co-ordinate Bench (Hon'ble Mr. Justice Dr. S.N. Pathak) of this Court.

32. It has been held by the Co-ordinate Bench (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) of this Court in the case of *Sushma Kumari @ Sushma Kumari Devi, Versus State of Jharkhand through its Principal Secretary, Department of School Education and Literacy and Others* in W.P.(S) No. 6023 of 2018 disposed of on 17.02.2021 at Para 18 to 23 as follow:-

> **"Para-18:-** The judgment relied by the learned counsel for the petitioner in the case of Madhuri Kumari (supra), in paragraph 6 of the said judgment it has been recorded that the District Inspectress of School was directed to make appointment for the period of three months and this paragraph of the judgment is fortified in view of the appointment letter of the petitioner, which is contained in Annexure-1 Series of the writ petition. Initially, the petitioner was appointed for three months and subsequently it was extended from time to time in light of paragraph 6 of the said judgment in the case

of **Madhuri Kumari v. The State of Bihar,** reported in **2002 SCC Online Jhar 636**. Paragraph 6 of the said judgment is quoted herein below:

"6. From perusal of the order passed by the Director, Secondary Education it appears that although the Inspectress of School was directed to make appointment for a limited period of three months but ignoring the said direction steps were taken for making regular appointment. Even for making regular appointment advertisement either in the Newspaper or by publication for inviting suitable candidates was not made nor the roaster clearance with regard to the reservation was followed. It appears that the Deputy Commissioner after making necessary inspection and inquiry found that these appointments were not made in accordance with the rules."

Para-19:- Thus, the judgment relied by the learned counsel for the petitioner in the case of Madhuri Kumari (supra) is on the other hand helping the petitioner and this aspect of the matter has not been examined by the learned counsel for the respondent-State.

Para-20:- The judgment relied by the learned counsel for the respondent-State in the case of Mewati Rani Singh (supra) is also distinguishable in the facts and circumstances of the present case. In that case, the District Inspectress of School has denied the appointment to the petitioner, which was later on considered by the authority concerned. That aspect of the matter has been dealt with by the coordinate Bench of this Court in paragraph 4 of that judgment and in that case, the Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi has also made enquiry into the matter and found the appointment of that petitioner was illegal. These are the facts, which are not present in the case in hand.

Para-21:- Thus, the two judgments relied by the learned counsel for the respondent-State are not helping the respondents.

Para-22:- The petitioner was appointed after following due process of law. The advertisement was there and thereafter the petitioner has been appointed. In light of these discussions, a reference may be made to the judgment rendered in the case **of Buddhi Nath Chaudhary v. Abahi Kumar**, reported in **(2001) 3 SCC 328**, whereby, the Hon'ble Supreme Court has held that the appointment made long back pursuant to a selection need not be

disturbed. Paragraph 6 of the said judgment is quoted herein below:

"6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. Therefore, the new exercise ordered by the High Court will only lead to anomalous results. Since we are disposing of these matters on equitable consideration, the learned counsel for the contesting respondents submitted that their cases for appointment should also be considered. It is not clear whether there is any vacancy for the post of Motor Vehicle Inspectors. If that is so, unless any one or more of the selected candidates are displaced, the cases of the contesting respondents cannot be considered. We think that such adjustment is not feasible for practical reasons. We have extended equitable considerations to such selected candidates who have worked in the post for a long period, but the contesting respondents do not come in that class. The effect of our conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in Ram Sarup v. State of Haryana; District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Deviand H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore. Therefore, we must let the matters lie where they are."

Para-23:- As a cumulative effect of the above discussions, the impugned order dated 01.10.2018 cannot sustain in the eyes of law. Accordingly, impugned order dated 01.10.2018, contained in Annexure-11 of the writ petition is quashed. In the peculiar facts and circumstances of the present case, the petitioner shall be entitled for consequential benefits."

33. Thereafter, the State had preferred LPA No. 141 of 2021 by challenging the order dated 17.02.2021 passed in WP(S) No. 6023 of 2018, however said LPA No.141 of 2021 was dismissed on 02.03.2023 by the Hon'ble Division Bench of this Court.

34. It has been held by the Hon'ble Division Bench of this Court (Hon'ble The Chief Justice and Hon'ble Mr. Justice Rongon Mukhopadhyay) in the case of The State of Jharkhand through its Principal Secretary, Department of School Education and Literacy and Others Versus Sushma Kumari @ Sushma Kumari Devi in L.P.A No.141 of 2021 dismissed on 02.03.2023 at Para 6 to 11 as follow:-

> **"Para-6:-** In assailing the judgment impugned, the learned counsel for the State would in essence raised two objections. They are as follows: -
> (i) The District School Inspectress was not competent to appoint in view of Rule 97(ii) of the Bihar Education Code which is later on adopted by the State of Jharkhand on its creation; and (ii) At the time of selection and appointment of the petitioner respondent, the roster regarding reservation was not followed and therefore, her appointment to the post of Assistant Teacher was illegal.
> **Para-7:-** In course of hearing, the learned counsel for the respondent would bring to our notice to clause-(xi) of Rule 97 of the Bihar Education Code, but it appears that in Rule 97 the said provision has been deleted. However, it is being borne from the record especially page no. 65 of the L.P.A. that the appointment of Smt. Sushma Kumari was confirmed by the District School Inspectress i.e. Zila Vidyalaya Nirikchhika with effect from 27.12.1988. But if there is any jurisdictional issue regarding the appointment of the respondent in the post of Assistant Teacher was at all there, the same stands rectified by the order passed by the Deputy Director of Education vide Memo no. 4161 dated 22.04.1989. Thus, on the basis of lack of jurisdiction or powers to appoint Assistant Teacher on the part of the District School Inspectress, there is no illegality in the order of appointment as far as sole respondent is concerned. **Para-8:-** Moreover, the petitioner-respondent has been appointed in the year 1988 and after expiry of more than 20 years, this question cannot be raised as a valid issue. The second point is regarding following up Roster regarding reservation of different category. This issue has been dealt by the Patna High Court **in Indra Mandal Prasad Singh Vs. State of Bihar, 2011 SCC Online Pat 1072**, wherein, similar

question of Roster clearance was raised and it was alleged that the concerned authority has not taken Roster clearance before appointment. At paragraph 8 it has been ruled by the Patna High Court that in view of the findings of this Court earlier and the claim of the petitioner from before, the onus lays on the respondent to establish on the basis of records of their offices, that either there was no decision of the Divisional Establishment Committee as referred to in the order of appointment of the petitioner issued by the Regional Deputy Director or the Establishment Committee had not taken into consideration any panel of names or had not adopted any procedure before recommending the petitioner for his appointment.

Para-9:- Once that presumption arisen from the wording of the appointment letter is not rebutted by the respondent, the benefit has to go to the petitioner. In this case also the positive case of the department before the Inquiry Officer as presented by the Presenting Officer that advertisement was issued, a select committee was constituted and the committee recommended the appointment of the respondent as an Assistant Teacher. As far as following of roster clearance regarding reservation of different backward categories of a person are concerned it is for the respondent to establish that it was not followed and in this case it is the positive case of the appellants that the record relating to the appointment of the petitioner are not available i.e. also the stand of the CBI. Only on the basis of the fact that the records are not available with the respondents authorities i.e. an appellants before us, a person cannot be held to be guilty of misconduct so we cannot come to conclusion that she has been appointed illegally.

Para-10:- In that view of the matter, we find no merit in the Letters Patent Appeal and the same is hereby, dismissed. However, there shall be no order as to costs.

Para-11:- The respondent be restored to her post with all financial and other service benefits within 60 working days, hence."

35. Thereafter, the State had filed SLP(C) No. 17378 of 2023 before the Hon'ble Supreme Court challenging the order dated 02.03.2023 passed in LPA No. 141 of 2021. However, said

SLP(C) No.17378 of 2023 was also dismissed on 11.09.2023 by the Hon'ble Supreme Court.

36. The Hon'ble Supreme Court has passed the order in the case of The State of Jharkhand and Others Versus Sushma Kumari @ Sushma Kumari Devi for Special Leave to Appeal (C) Diary No.(s) 17378 of 2023 on 11.09.2023, at Para 1 to 3, as follow:-

> "**Para-1:-** Delay condoned.
> **Para-2:-**We are not inclined to interfere with the order impugned herein under Article 136 of the Constitution of India.
> **Para-3:-**The petition for special leave to appeal is dismissed. Pending applications(s), if any, are disposed of."

37. It has been held by the Co-ordinate Bench (Hon'ble Mr. Justice Dr. S.N. Pathak) of this Court in the case of Viniti Prasad Versus The State of Jharkhand through the Secretary/Principal Secretary, School Education and Literacy Department and Others in **W.P.(S) No.4198 of 2019** passed on 25.04.2023 at Para 8 to 11 as follow:-

> **"Para-8:-** From the pleadings and arguments advanced by parties, the main allegations levelled against the petitioner are:-
> (i) The appointment was made without following due process of law, without advertisement, examination or interview and the same is illegal.
> (ii) The petitioner secured appointment through improper means;
> (iii) The District School Inspectress was not competent to appoint in view of Rule 97(ii) of the Bihar Education Code, which is later on adopted by the State of Jharkhand on its creation.
> (iv) At the time of selection and appointment, the roster regarding reservation was not followed and therefore, the appointment to the post of Assistant Teacher was illegal.
> (v) A reference was made to the CBI inquiry and in the said inquiry, name of the petitioner was recorded.
> **Para-9:-** Having gone through rival submission of the parties, this Court is of the considered view that

impugned order is fit to be quashed and set aside for the following facts and reasons:

(i) It is apparent from the fact and circumstances of the case that petitioner was never heard during course of investigation and without giving reasonable opportunity of hearing, the impugned order has been passed.

(ii) The petitioner has rendered service for more than 34 years without any complaint and at the fag end of service just before her retirement on 30.09.2019, she has been terminated without following the principles of nature justice.

(iii) The non-service of the enquiry report of the Enquiry Officer has seriously prejudiced case of the petitioner to take appropriate defence and as such the penalty order deserves to be quashed and set aside.

(iv) From the record it appears that the CBI has not uttered any adverse remarks against the petitioner rather it has been indicated in the report that "records are not available" with respect to appointment of the petitioner. Only on the basis of the fact that the records are not available with the respondents authorities, a person cannot be held to be guilty of misconduct.

(v) So far the issue regarding reservation roster is concerned, the same has been dealt by Hon'ble Patna High Court in the case of **Indra Prasad Singh Vs. State of Bihar** reported in **2011 SCC OnLine Pat 1072.**

(vi) The similar issue fell for consideration before this Court in **L.P.A. No. 141 of 2021 (The State of Jharkhand and others Vs. Sushma Kumar @ Sushma Kumari Devi)**, and the Hon'ble Division Bench, upheld the order passed by the Single Judge and further directed to restore her to the post with all financial and other service benefits.

Para-10:- This Court cannot take a different view than what has already been taken in **L.P.A. No. 141 of 2021**.

Para-11:- As a sequitur to the aforesaid rules, guidelines, judicial pronouncement, the impugned Memo No.06/Ra.Vi.1-34/2018-2613, dated 24.09.2018 (Annexure-8) passed by respondent no.2, whereby and whereunder she has been dismissed from the service as also the appellate order as contained in Memo no. 22/Ranchi dated 05.07.2019 (Annexure-10) passed by Principal Secretary–cum–Appellate Authority are hereby quashed and set aside. Since petitioner has crossed

> the age of superannuation and as such there is no question of reinstatement in service. However, petitioner is entitled for the consequential benefits including the back wages."

38. It has been held by the Co-ordinate Bench(Hon'ble Mr. Justice Dr. S.N. Pathak) of this Court in the case of *Pankajini Das Versus State of Jharkhand through Secretary, Human Resources Department, and Others* reported in *W.P.(S) No.5990 of 2019,* passed on 01.11.2023 at Para 5 and 6 as follow:-

> **"Para-5:-** On the other hand, learned counsel for the respondents vehemently opposing the contention of learned counsel for the petitioner submits that as the initial appointment of the petitioner itself was under cloud as the officer who had appointed the petitioner was not competent enough having no powers under the law to appoint the petitioner and others and as such when initial appointment was itself not in accordance with law, even if petitioner has continued for more than 34 years in service. She is not entitled for any benefits after retirement. Learned counsel submits that it was only on the direction of Hon'ble Patna High Court, CBI enquiry was conducted and in the said enquiry petitioner was held guilty and as such rightly the impugned order has been passed under Rule 43(a)(b) and (c) of the Jharkhand Pension Rules.
>
> **Para-6:-** Having gone through the rival submissions of the parties, this Court is of the view that impugned order is not tenable in the eyes of law for following facts and reasons:
>
> (i) The CBI report was never brought on record. It is stated that records are not available. This Court fails to understand that when the records are not available, now the petitioner has been held guilty of the charges and his initial appointment was wrong.
>
> (ii) It is admitted fact that petitioner had rendered long services and it was only because of the CBI enquiry, it is said that his appointment was not in accordance with law.
>
> (iii) It is a case brought before this Court that after enquiry the persons who were responsible for appointment of the petitioner have never been punished and any action has been ever taken against them, when records are not available it cannot be

said that appointment is not in accordance with law.
(iv) It is alleged that the respondent who appointed the petitioner was not authorized to make such appointment but no document in that regard has been brought on record and since no such record was available before the CBI, the petitioner cannot he held guilty of charges.

The impugned order at Annexure-6 and Annexure-7 is not tenable in the eyes of law and the same are hereby quashed and set aside.

The contention of learned counsel for the respondents is that petitioner was illegally appointed and the appointment was collusive, if it was collusive appointment how and why petitioner has been allowed to continue for such a long period.

The Hon'ble Patna Court in the case of **Kabir Mahto v. The State of Bihar**, reported in **2009 (1) PLJR 35** have taken similar view specifically at paras-7 and 8 thereof. The Court is in full agreement with view taken by the Hon'ble Patna High Court as well as this Court.

Since the impugned order had already been quashed, the petitioner is entitled for all the pensionary benefits, the same shall be released to him within a period of twelve weeks from the date of receipt of the copy of this order.

Accordingly, the instant writ petition stands allowed."

39. It has been held in the case of Kabir Mahto Versus The State of Bihar and Ors. reported in 2009 (1) PLJR 35 at Para 14 and 15 as follow:-

"**Para 14:-** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

> **Para 15:-** We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

40. It is well settled that non supply of Enquiry Report and Second Show Cause notice vitiates the departmental proceeding. It is held in the case of Managing Director, ECIL, Hyderabad and Ors. Vs. B. Karunakar and Ors. report in (1993) 4 SCC 727 that supply of Enquiry Report is mandatory otherwise the delinquent employee would not be in a position to defend his case.

41. On perusal of the records it appears that the petitioner has not been served with the documents, which are the basis of the C.B.I. enquiry report and departmental enquiry report with respect to the allegations made and the impugned order has been passed by the respondents against the petitioner. Therefore, it is evident that the impugned order dated 24.09.2018 (i.e. Annexure-8) has been passed in violation of the law laid down in the case of Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors. Reported in (1993) 4 SCC 727 that the decision in a Departmental Proceeding is not good without supplying the delinquent the material which are the basis for such decision.

42. It has been held by the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar

& Ors., reported in (1993) 4 SCC 727, at Para 61 to 63 as follows:

> "**Para 61:-** It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice. The contention on behalf of the Government/management that the report is not evidence adduced during such inquiry envisaged under proviso to Article 311(2) is also devoid of substance. It is settled law that the Evidence Act has no application to the inquiry conducted during the disciplinary proceedings. The evidence adduced is not in strict conformity with the Indian Evidence Act, though the essential principles of fair play envisaged in the Evidence Act are applicable. What was meant by 'evidence' in the proviso to Article 311(2) is the totality of the material collected during the inquiry including the report of the enquiry officer forming part of that material. Therefore, when reliance is sought to be placed by the disciplinary authority, on the report of the enquiry officer for proof of the charge or for imposition of the penalty, then it is incumbent that the copy thereof should be supplied before reaching any conclusion either on proof of the charge or the nature of the penalty to be imposed on the proved charge or on both.
>
> **Para-62:-** Shri P.P. Rao obviously realising this effect, contended that the enquiry officer being a delegate of the disciplinary authority is not bound by the delegatee's recommendations and it is not a material unless it is used by the disciplinary authority. Therefore, the need for its supply does not arise and the principles of natural justice need not be extended to that stage as the officer/workman had opportunity at the inquiry. In support thereof he placed strong reliance on Suresh Koshy George v. University of Kerala [(1969) 1 SCR 317 :

AIR 1969 SC 198] ; Shadi Lal Gupta v. State of Punjab [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] ; Hira Nath Misra v. Principal, Rajendra Medical College, Ranchi [(1973) 1 SCC 805 : AIR 1973 SC 1260] ; Satyavir Singh v. Union of India [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ; Secretary, Central Board of Excise & Customs v. K.S. Mahalingam [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] and Union of India v. Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] . I am unable to agree with his contentions. Doubtless that the enquiry officer is a delegate of the disciplinary authority, he conducts the inquiry into the misconduct and submits his report, but his findings or conclusions on the proof of charges and his recommendations on the penalty would create formidable impressions almost to be believed and acceptable unless they are controverted vehemently by the delinquent officer. At this stage non-supply of the copy of the report to the delinquent would cause him grave prejudice. S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] renders no assistance. It is only an inquiry against malpractice at an examination conducted by the University under executive instruction. Therein the students were given an opportunity of hearing and they were supplied with all the material, the foundation for the report. The observations of the Bench of two Judges with regard to the theory of two stages in the Inquiry under Article 311 also bears little importance for the foregoing consideration in this case. It is already seen that this Court held that the inquiry from the stage of charge-sheet till the stage of punishment is a continuous one and cannot be split into two. The reliance in Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] is also of no avail. Therein it was pointed out that under Section 18-A of the I.D.R. Act there was no scope of enquiry at two stages and the omission to supply enquiry report, before taking the action, did not vitiate the ultimate decision taken. In Shadi Lal case [(1973) 1 SCC 680 : 1973 SCC (L&S) 293 : (1973) 3 SCR 637] Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules did not provide for the supply of copy of the report of an inquiry conducted by the fact finding authority before inquiry. It was held that the delinquent officer was supplied with all the materials and was given opportunity to make

representation and the same was considered. The report did not indicate anything in addition to what was already supplied to him. Under those circumstances it was held that the principles of natural justice cannot be put into an iron cast or a strait-jacket formula. Each case has to be considered and the principles applied in the light of the facts in each case. The effect of the violation of the principles of natural justice on the facts of the case on hand needs to be considered and visualised. The effect of Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio was considered by my brother Sawant, J. and it needs no reiteration. The reliance on S.K. George case [(1969) 1 SCR 317 : AIR 1969 SC 198] in Tulsiram Patel [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131] ratio renders no assistance in the light of the above discussion. Since Mahalingam case [(1986) 3 SCC 35 : 1986 SCC (L&S) 374] which was after the Forty-second Amendment Act, the need to supply second show-cause notice was dispensed with, regarding punishment and therefore, that ratio renders no assistance to the case. Hira Nath Misra case [(1973) 1 SCC 805 : AIR 1973 SC 1260] also is of no avail since the inquiry was conducted relating to misbehaviour with the girl students by the erring boys. The security of the girls was of paramount consideration and therefore, the disclosure of the names of the girl students given in the report or their evidence would jeopardise their safety and so was withheld. Accordingly this Court on the fact situation upheld the action of the Medical College. Satyavir Singh [(1985) 4 SCC 252 : 1986 SCC (L&S) 1 : AIR 1986 SC 555] ratio also is of no assistance as the action was taken under proviso to Article 311(2) and Rule 199 of the CCA Rules. The inquiry into insubordination by police force was dispensed with as the offending acts of the police force would generate deleterious effect on the discipline of the service. Asthana case [(1988) 3 SCC 600 : 1988 SCC (L&S) 869] was considered by my brother Sawant, J. in which the report was not supplied and it was upheld. It should, thus be concluded that the supply of the copy of the enquiry report is an integral part of the penultimate stage of the inquiry before the disciplinary authority considers the material and the report on the proof of the charge and the nature of the punishment to be imposed. Non-compliance is denial of reasonable

opportunity, violating Article 311(2) and unfair, unjust and illegal procedure offending Articles 14 and 21 of the Constitution and the principles of natural justice.

Para 63: The emerging effect of our holding that the delinquent is entitled to the supply of the copy of the report would generate yearning for hearing before deciding on proof of charge or penalty which Forty-second Amendment Act had advisedly avoided. So while interpreting Article 311(2) or relevant rule the court/tribunal should make no attempt to bring on the rail by back track the opportunity of hearing as was portended by the Gujarat High Court. The attempt must be nailed squarely. Prior to the Forty-second Amendment Act the delinquent had no right of hearing before disciplinary authority either on proof of charge or penalty. So after Forty-second Amendment Act it would not be put on higher pedestal. The Gujarat High Court's decision is, therefore, not good law. However, the disciplinary authority has an objective duty and adjudicatory responsibility to consider and impose proper penalty consistent with the magnitude or the gravity of the misconduct. The statute or statutory rules gave graded power and authority to the disciplinary authority to impose either of the penalties enumerated in the relevant provisions. It is not necessarily the maximum or the minimum. Based on the facts, circumstances, the nature of imputation, the gravity of misconduct, the indelible effect or impact on the discipline or morale of the employees, the previous record or conduct of the delinquent and the severity to which the delinquent will be subjected to, may be some of the factors to be considered. They cannot be eulogised but could be visualised. Each case must be considered in the light of its own scenario. Therefore, a duty and responsibility has been cast on the disciplinary authority to weigh the pros and cons, consider the case and impose appropriate punishment. In a given case if the penalty was proved to be disproportionate or there is no case even to find the charges proved or the charges are based on no evidence, that would be for the court/the tribunal to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction and to give appropriate relief. But this would not be a ground to extend hearing at the stage of consideration by the disciplinary authority either on proof of the charge or on imposition of the

> penalty. I respectfully agree with my brother Sawant, J. in other respects in the draft judgment proposed by him."

43. It is well settled that even in a departmental proceeding against an employee, the department has to examine its witnesses and to prove to its document in support of charges framed against the delinquent employee, failing which the finding of entire departmental proceeding will be vitiated.

44. It further transpires that apart from the fact that the petitioner was not provided with the documents, such as C.B.I. report and the documents which are the basis of the departmental enquiry. It is evident from perusal of the departmental enquiry report itself that the competent authority with respect to the appointment was never examined in the so-called departmental proceeding and the impugned order has been passed mainly on the basis of the C.B.I. report, which is in contravention of the law settled in the case of Roop Singh Negi Versus Punjab National Bank and Others reported in (2009) 2 SCC 570.

45. It has been held in the case of Roop Singh Negi v. Punjab National Bank reported in (2009) 2 SCC 570, at Para No. 14 and 15 as follows:-

> **"Para 14:-** Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did

not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

Para 15:- We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

46. It has been held in the case of *State of Uttaranchal v. Kharak Singh*, reported in *(2008) 8 SCC 236* at Para 15 to 17 which are as follows:-

"Para-15:- From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the

disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

Para-16:- Now, let us consider the merits of the case on hand and whether the High Court is justified in quashing the orders passed by the disciplinary authority as well as the appellate authority dismissing the respondent from service. In the proceedings Letter No. 1644/8 Haldwani dated 19-12-1984 (Annexure P-1) after furnishing certain factual details, the following charges have been levelled against the delinquent:

"Charge 1.—You have concealed the illegal cutting which took place in Asani Block from your higher officials deliberately which caused huge financial loss to the Department.

Charge 2.—You have not obeyed the orders of your higher officials and you have travelled leaving your work without any reason in arbitrary manner.

Charge 3.—You have shown negligence in discharging your duties."

Though a detailed explanation has been submitted controverting the above charges, no enquiry in terms of the abovementioned principles was ever conducted.

Para-17:- On the other hand, one Mr P.C. Lohani, Dy. Divisional Forest Officer, Nandhaur acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16-11-1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the enquiry officer himself has acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

47. It has been held in the case of State of *U.P. v. Saroj Kumar Sinha,* reported in *(2010) 2 SCC 772* at Para 27 to 30 and 33 to 34 are as follows:-

"Para-27:- A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his

appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

Para-28:- An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

Para-29:- Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

Para-30:- When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

Para-33:- As noticed earlier in the present case not only the respondent has been denied access to

> documents sought to be relied upon against him, but he has been condemned unheard as the inquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of the principles of natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge-sheet.
>
> **Para-34:-** This Court in Kashinath Dikshita v. Union of India [(1986) 3 SCC 229 : 1986 SCC (L&S) 502 : (1986) 1 ATC 176] , had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a government servant. In that case the enquiry proceedings had been challenged on the ground that non-supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority."

48. Even the Hon'ble Patna High Court has decided the cases of those person, who are similarly situated with the writ petitioners and who were also appointed by the District Inspectress of School sometime in the year 1988-89 and who had also faced enquiry in the light of the Order dated 18.12.1998 passed in C.W.J.C No.9847 of 1998 (Brajesh Kumar Singh Versus State of Bihar and Ors.) by the Hon'ble Patna High Court.

49. It has been held by the Hon'ble Patna High Court in the case of *Kamini Kumari Versus The State of Bihar and Others* reported in LPA 1219 of 2023 and others, at Para-16,17,19 to 21, ,23,30,31 and 40 to 46 as follows:-

Para-16:- One of the main grounds raised against the aforesaid proceedings, is violation of Rule 43 (b) of Bihar Pension Rules, 1950. Rule 43(b) reserves the right of the State Government to withhold or withdraw the pension or any part of it, whether permanently or for a specified period along with right of ordering the recovery from a pension, of any pecuniary loss caused to the Government. When the pensioner is found to be guilty of grave misconduct or caused pecuniary loss to the Government by misconduct or negligence, the proviso to the rule kicks in. The proviso prescribes that if proceedings are not instituted when the government servant is on duty, then it shall not be instituted without the sanction of the State Government. It is also provided that such inquiry shall only be in respect of an event which took place not more than four years before the institution of such proceedings. Both these mandatory requirements, one of sanction, and the other, of an absolution for any incident prior to four years prior to retirement, are not complied with, is the compelling argument.

Para-17:- Admittedly, there is no sanction issued by the State Government and the illegal appointments alleged are far prior to the retirement; more than three decades before retirement, which recruitment and appointment are termed illegal. The allegation raised against the individual teachers, is of the appointment itself being vitiated for illegality. In this context, we have to notice that earlier there was a proceeding initiated before retirement which culminated, in this Court interfering with the penalty imposed at least in the case of certain teachers against whom the CBI adversely reported.

Para-19:- The appointment by Annexure-5 was confirmed by the Inspectoress of Schools-cum-Deputy Director of Education, Bihar as per Annexure-6 dated 20.10.1981. The extracts of the service book of the petitioner produced as Annexure-7, Annexure-8 and Annexure-9 evidences her promotion to the Subordinate Education Services as Lecturer with effect from 17.05.1990, her pay fixation thereat and her further promotion to the Bihar Education Services on 11.04.2013. Annexure-10 and 11 are again the orders granting her the first financial progression in service and her pay fixation.

Para-20:- Annexure-12 indicates her retirement on 31.01.2016, later to which, Annexure-13 show-

cause notice dated 29.05.2019 was issued. In the show-cause, a memo of charges dated 13.10.2016 and a reminder to show-cause notice dated 17.01.2017 were referred to; which the petitioner/appellant submits was never issued to her. Immediately, we also have to notice that the memo of charges, in any event, was after the retirement, almost 10 months after superannuation. Even after the issuance of notice under Annexure-13, the Department kept mum till Annexure-17 reminder was issued on 26.02.2021, wherein the memo of charges (Annexure-18) and the CBI report (Annexure-19) based on which the accusation was raised, was issued to the petitioner. Annexure-21, is the final order withholding 100% of the pension under Rule 139 (c) of the Bihar Pension Rules.

Para-21:- It is on the above facts that the grounds raised of violation of Rule 43(b) has to be considered. We have already noticed rule 43(b) which goes to the root of initiation of proceedings since the grounds raised are that, no sanction was obtained from the Government and further that the incident on which the allegation is raised occurred at the initial appointment of the petitioner, that is more than 3 ½ decades back.

Para-23:- In understanding the rigor of Rule 43(b) & 139(c) we need only refer to the decision of the Hon'ble Supreme Court in State of Bihar v. Md. Idris Ansari 1995 Supp 3 SCC 6. Paragraph 7 of the said judgment is extracted herein below:-

"Para-7. A mere look at these provisions shows that before the power under Rule 43(b) can be exercised in connection with the alleged misconduct of a retired government servant, it must be shown that in departmental proceedings or judicial proceedings the government servant concerned is found guilty of grave misconduct. This is also subject to the rider that such departmental proceedings shall have to be in respect of misconduct which took place not more than four years before the initiation of such proceedings. It is, therefore, apparent that no departmental proceedings could have been initiated in 1993 against the respondent under Rule 43(a) and (b), in connection with the alleged misconduct, as it is alleged to have taken place in the year 1986-87. As the alleged misconduct by 1993 was at least six years' old, Rule 43(b) was out of picture. Even the respondent authorities accepted this legal position when they issued notice dated 27-9-1993. It was clearly stated therein that no action can be taken

under Rule 43(b) of the Rules as the period of charges has been old by more than four years. It is equally not possible for the authorities to rely on the earlier notice dated 17-10-1987 as proceedings pursuant to it were quashed by the High Court in Writ Petition No. 6696 of 1991 and only liberty reserved to the respondent was to start fresh proceedings. The High Court did not permit the respondent to resume the earlier departmental inquiry pursuant to the notice dated 17-10-1987 from the stage it got vitiated. The respondent also, therefore, did not rely upon the said notice dated 17-10-1987 but initiated fresh departmental inquiry by the impugned notice dated 27-9-1993. Consequently, it is not open to the learned advocate for the appellant to rely upon the said earlier notice dated 17-10-1987.

The above extract clearly interprets the provision under Rule 43(a) and (b) succinctly. In the present case, there is clear violation of Rule 43(b); in that no sanction is produced on the part of the Government for the inquiry initiated after retirement. The incident based on which the allegation is raised also relates back to the year 1980, when even the memo of charges, deemed as the first initiation of proceedings was dated 13.10.2016. In this context, we also have to reiterate that the CBI inquiry was ordered in 1998, the report was before the Government in 2004, and proceedings were taken far later to that. Again, the action was based on a direction issued by this Court in a public interest litigation, which specifically directed that any proceedings taken would be in accordance with law. It was made clear that no termination of teachers shall take place pursuant to the notice of the CBI inquiry and without following due process of law, hence there cannot be a digression from the procedure stipulated under the Bihar Pension Rules to proceed against the retired employees of the Government.

Para-30:- Initiation of proceedings occurred by memo of charges dated 27.10.2018 against the two petitioners produced respectively as Annexure-19 and 20. The orders of the Deputy Regional Director, Munger Division, under Rule 43(b) and 139(c) of the Bihar Pension Rules issued, subsequent to the disposal of the writ petition are produced respectively as Annexure-P4 and P5 both dated 21.11.2023. The interpretation of Rules 43(b) and 139 of the Bihar Pension Rules squarely applies

in the above case also.

Para-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.

Para-40:- Now, we come to LPA No. 1249 of 2023 arising out of CWJC No. 20610 of 2021. The petitioner was appointed as an Assistant Teacher on 07.02.1981 and retired on 13.11.2019. The allegation against her in the CBI report produced as Annexure-20, was that she was only having a diploma in teaching course, the course period being two months; in the place of BTC of two years duration; which later qualification was the minimum required. It was also alleged that she was not appointed after a proper procedure and that her appointment was without roster clearance and without following the reservation protocol. The first memo of charge was issued on 28.08.2017. The petitioner retired on 30.09.2019 and even after that the departmental proceeding initiated against her was continued and the inquiry report at Annexure-32 was forwarded to the petitioner for her explanation by Annexure-33 which was submitted by Annexure-34. By Annexure-35 the petitioner's 100 per cent pension was withheld. In her case there was no requirement of a sanction since the inquiry was initiated prior to retirement, but continuance of the same is not permissible since the appointment, which was the basis of the allegation was three decades back. There is also no valid ground to invoke Section 139(c).

Para-41:- We cannot but deprecate the manner in which the inquiry proceedings were initiated by the

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

Para-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.

Para-43:- Less said the better about the manner in which the inquiry was conducted. The memo of charges only contained the extract of the CBI report pointing out the alleged irregularity, as against the

appointment of the individual petitioners. There was none examined at the inquiry nor documents marked. The extract of the CBI report could have been marked and proved only by the person who prepared the report or another officer of the CBI, who could depose on the basis of the records. This procedure was not followed and the inquiry officer did not independently consider the irregularity in appointment alleged.

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

Para-14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

Para-45:- We have also noticed that the irregularity of roster clearance having not been obtained and the reservation rules not being followed were not treated as a ground to find irregularity in the appointments, in many individual cases. Insofar as the contention of over age is concerned, the petitioner who was accused with that, has demonstrated that it is otherwise.

Para-46:- On the reasoning above, we reverse the judgment of the learned Single Judge by allowing the appeals and allow the writ petitions setting aside the impugned orders. The orders set aside are those in which the punishments have been imposed, produced in the writ petition or by way of interlocutory application. These produced in the appeals, passed while they were pending also are set aside.

50. It is well settled that burden of proof is upon the person

who alleges a certain fact against another. In the instant case, it was burden upon the respondents to prove its case that the petitioner was not fulfilling the requisite qualification and neither any interview had taken nor any paper publication was made in absence of any record produced on behalf of the department.

51. From perusal of the impugned order dated 24.09.2018, it appears that the appointment of petitioner was held irregular on the ground that the petitioner could not produce any evidence with respect to fulfillment of the pre-conditions of such appointment, i.e. advertisement in the newspapers, roster clearance, reservation policy etc. at the time of her appointment, which is in contravention of the law laid down in Tajvir Singh Sodhi v. State (UT of J&K), reported in 2023 SCC OnLine SC 344, in which it is held that the burden of establishing mala fides is heavily on the person who alleges it and the allegations of mala fides are more than often easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility, and in the present case it was the respondents who made allegations against the petitioner regarding such non-fulfilment of aforesaid pre-conditions for appointment at time of her appointment, but they not only have not produced any evidence to prove such allegation, but also demanded such evidence from the petitioner.

52. It has been held in the case of Tajvir Singh Sodhi v. State (UT of J&K), reported in 2023 SCC OnLine SC 344 at Para 25 as follows**:-**

> "**Para 25:-** It was contended that this Court in the context of non-availability of any part of selection records has, in Trivedi Himanshu Ghanshyam

> bhai v. Ahmedabad Municipal Corporation, (2007) 8 SCC 644 (Trivedi Himanshu Ghanshyam bhai) held that only because the records could not be produced in view of the fact that they were not available, no inference as to mala fides can be drawn against the members of a Selection Committee and the selection cannot be cancelled. In this regard it was submitted that the impugned judgment and the judgment of the Single Judge, setting aside the entire selection of the appellants herein due to the non-availability of individual award rolls, despite, signed approval of the final Select List by the Board, is contrary to law. That the burden of establishing mala fides is heavily on the person who alleges it and the allegations of mala fides are more than often easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility, vide Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579; State of Bihar v. P.P. Sharma, (1992 Supp (1) SCC 222); Ajit Kumar Nag v. Indian Oil Corporation Ltd., (2005) 7 SCC 764; Union of India v. Ashok Kumar, (2005) 8 SCC 760."

53. It transpires that this Co-ordinate Bench of this Court (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) in W.P.(S) No.6023 of 2018 and Co-ordinate Bench of this Court (Hon'ble Mr. Justice Dr. S.N. Pathak) in W.P.S. No.4198 of 2019 and W.P.(S) No.5990 of 2019 and Hon'ble Division Bench of this Court (Hon'ble The Chief Justice and Hon'ble Mr. Justice Rongon Mukhopadhyay) in L.P.A. No.141 of 2021 have allowed the writ petitions to the similar situated persons namely Sushma Kumari@ Sushma Kumari Devi, Vinita Prasad and Pankajini Das and have allowed the writ petitions in favour of those writ petitioners.

54. Even the Division Bench of this Court in LPA No. 141 of 2021 had gone far ahead by directing the authority to appoint and restore the petitioner Sushma Kumari to the post where she was held prior to her termination and which was also

affirmed by the Hon'ble Supreme Court in S.L.P(C) No.17378 of 2023.

55. Thus, it is evident that the persons, who were similarly situated to the petitioner, have been granted reliefs by the Hon'ble Jharkhand High Court and the Hon'ble Patna High Court .

56. It is also well settled that if some relief is granted to similarly situated persons then the petitioner being similar situated will also be entitled to the same reliefs.

57. It is well settled from the judgments of the Hon'ble Supreme court in the case of *Kangra Central Cooperative Bank Pensions Welfare Association Versus State of Himachal Pradesh and Others* reported in *2022 SCC OnLine SC 1031* and in the case of *Om Prakash Banerjee Versus State of West Bengal and Others* reported in *2023 SCC OnLine 771* that a person has to be granted same relief if the similarly situated persons have been granted the same reliefs.

58. It appears that the petitioner namely Manju Kumar was aged about 59 years at the time of passing of impugned order and as such the petitioner has crossed the age of superannuation.

59. Under the circumstances, the petitioner cannot be reinstated into service, however, she will be entitled to get all the consequential benefits including arrears of salary since she would have drawn till the date of her superannuation in accordance with law.

60. In view of the law laid down by the Hon'ble Supreme Court and the Hon'ble Jharkhand High Court, Ranchi and the Hon'ble Patna High Court and on the facts and in the

circumstances of this case, this Court sets aside the impugned order dated 24.09.2018 as contained in Annexure-8 passed by Respondent No.2 (Director, Secondary Education, Government of Jharkhand) and this Court directs the Respondents to pay all the consequential benefits including arrears of salary and such other monetary benefits and the like to the petitioner and will be paid to her forthwith in accordance with law.

61. Thus, the WP(S) No.3107 of 2019 is allowed with the direction and observation mentioned above.

(Sanjay Prasad, J.)

Nishant/-