

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10748 of 2021

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Renuka Devi Daughter of Bindeshwari Singh Residing at Professors Colony,
Rangbhumi Maidan, Within Purnia Town, Police Station-Khazanchi hat,
District-Purnia, PIn 854301.

... .. Petitioner/s

Versus

1. The State of Bihar thorough Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. Director, Secondary Education, Education Department, office of the Bihar Secondary Education, Budh Marg, Patna-1.
3. Accountant General of Bihar, Birchand Patel Path, Patna.
4. Regional Deputy Director of Education, Purnia Division, Purnia.
5. District Education Officer, Purnia.
6. District Program Officer, Establishment, Purnia.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate
For the Respondent/s : Mr. Madanjeet Kumar (GP-20)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 11-04-2025

Heard Mr. Gyanand Roy, learned counsel appearing
on behalf of the petitioner and Mr. Madanjeet Kumar, learned
GP-20 for the respondent/s.

Re.: I.A. No. 02 of 2022

2. Learned counsel appearing on behalf of the
petitioner by filing the present interlocutory application seeks
amendment in Para-1 of the writ petition by adding additional
relief as stated in Para-1 of the present interlocutory application.

3. Having considered the information contained in the
interlocutory application and the grounds mentioned therein and



the affidavit, I find that there are sufficient reason to allow the amendment of the prayer as prayed in Para-1 of the writ petition by adding additional relief as stated in Para-1 of the interlocutory application.

4. I.A. No. 02 of 2022 is allowed.

Re: CWJC No. 10748 of 2021.

5. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"i. For quashing of the office order issued by the Director, Secondary Education, by his Memo No. 427, dated 19.02.2021 as contained in Annexure P/1 to the present writ application, by which following punishments have been inflicted upon her:

a. Promotion given to the petitioner on the post of headmaster has been cancelled with retrospective effect.

b. District Education Officer, Purnia, has been directed to recover the financial benefits from the petitioner which she has received on account of her promotion to the post of Headmaster.

c. 25% of the pension amount has been directed to be withheld.

ii. For quashing Letter No. 643, (Est.), dated 17.03.2021 as contained in Annexure P/2 to the writ petition, issued under the signature of District Programme Officer (Est.), Purnia, by which petitioner has been directed to deposit an amount of Rs. 75,249.00/- (Seventy Five thousand Two Hundred and Forty Nine), in the government account within the period of three days and to submit the deposit slip along with copy of the PPO book in this office.

iii. For holding that the petitioner has not committed any misconduct for which the above mentioned punishment have been inflicted upon her.

iv. For commanding the respondent to not to make any recovery from the petitioner and to make payment of her monthly pension regularly like



before.

v. For any other relief/reliefs for which the petitioner is legally found to be entitled in the facts and circumstances of the present case."

Thereafter the petitioners filed I.A. No.02 of 2022 for modification of the prayer made in the writ application, *inter alia*, seeking following relief(s):

"i. For quashing the order dated 30.04.2022 passed by the Additional Chief Secretary, Education Department, Government of Bihar, Patna and communicated to the petitioner by Memo No. 940 dated 06.05.2022 as contained in Annexure P/16 to the present Interlocutory Application by which the appeal filed by the petitioner against the order of punishment inflicted upon her by the order of the Director Secondary Education, Government of Bihar by his Memo No. 427 dated 19.02.2021 (as contained in Annexure P/1 to the writ petition) has been dismissed.

ii. For holding that the appellate authority has mechanically dismissed the appeal of the petitioner filed against the order of punishment without proper application of his mind to the issue raised by the petitioner in her Memo No appeal."

BRIEF FACTS:

6. Petitioner is aggrieved by the order contained in Memo No. 427 dated 19.02.2021 issued under the signature of Director, Secondary Education, by which, promotion given to the petitioner on the post of headmaster has been cancelled with retrospective effect, thereafter, the District Education Officer, Purnia directed to recover the financial benefits from the petitioner, which she had received on account of her promotion



to the post of headmaster and to withheld twenty five percent pension amount of the petitioner *vide* the Letter No. 643, (Est.), dated 17.03.2021 issued under the signature of the District Programme Officer (Establishment), Purnia, and the petitioner has been directed to deposit an amount of Rs. 75,249/- in the government account within the period of three day and to submit the deposit slip along with copy of the P.P.O. book. Aggrieved by the order, the petitioner had preferred appeal before the Additional Chief Secretary, Education Department, Government of Bihar, Patna against the order Memo No. 427 dated 19.02.2021 passed by the Director, Secondary Education, and the same was dismissed *vide* order dated 30.04.2022 contained in Memo No. 940 dated 06.05.2022. Hence the present writ petition.

SUBMISSION ON BEHALF OF THE PETITIONER:

7. Learned counsel appearing on behalf of the petitioner has pointed out major infirmity that the disciplinary action against the petitioner had been initiated after more than four years of the retirement. The petitioner had superannuated on 30.06.2013. On the basis of allegation petition, the Lokayukta, Bihar, *vide* Letter No. 1511 dated 09.04.2013, directed to conduct an enquiry. The enquiry report was



submitted before the Director, Secondary Education and based on the said enquiry report, without following the provision contained in Bihar Pension Rules, 1950, the impugned orders contained in Memo No. 427 dated 19.02.2021 and order contained in Letter No. 643 dated 17.03.2021 have been passed. Learned counsel further submitted that the enquiry report, which was submitted before the Director, Secondary Education, cannot be foundation for taking disciplinary action against the petitioner after expiry of statutory period contained in Rule 43(b) of Bihar Pension Rules, 1950. Learned counsel further submitted that the alleged illegality committed by the petitioner relates to period 1984-1986 allegedly that the petitioner had passed M.Sc. Examination without taking any leave or giving any information to the department, which cannot amount to misconduct. The petitioner had already given prior information that she is pursuing masters degree.

8. Learned counsel further submitted that the action taken on the basis of enquiry report on the direction of the Lokayukta has been deprecated in the case of ***Bipin Bihari Singh vs. the State of Bihar & Ors.*** reported in ***(2020) 3 PLJR 10***, wherein, this Court has clarified that a report can be submitted before the competent authority to initiate disciplinary



proceeding against a public servant only if the public servant is found to have committed an offence under section 16 (1) of the Prevention of Corruption Act, 1988. In the present case, there is no allegation of corrupt activity for any financial gain or personal gain or lack of integrity against the petitioner. Therefore, the allegation cannot be sustained, which also vitiates the action taken against the petitioner and the orders contained in Memo No. 427 dated 19.02.2021 and Letter No. 643 dated 17.03.2021. Learned counsel further relied upon the law laid down by the Apex Court in case of *the State of Bihar vs. Mohd. Idris Ansari* reported in *AIR 1995 SC 1853* to contend that any penalty affecting the pension of a government employee can be awarded only after exhausting due procedure under Rule 43(b) of the Bihar Pension Rules, 1950 within the statutory period of four years and the respondents have given complete go by to all the procedure laid down. Learned counsel next submitted that the further illegality has been committed by the Disciplinary Authority by following the procedure laid down in Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, to which, he could not have resorted after the petitioner has retired from service.

SUBMISSION ON BEHALF OF THE RESPONDENT:



9. *Per contra*, learned counsel appearing on behalf of the State submitted that based on the enquiry, the charges were proved against the petitioner that while working to the post of Assistant Teacher, petitioner had obtained the post graduate degree as regular student and during the study period, she had drawn her salary from the government fund, therefore, the conduct of the petitioner amounts to misconduct and the conduct of the petitioner was unbecoming of an officer. Due permission is required for obtaining higher qualification and study leave is required as per the provision of Bihar Service Code. Learned counsel further submitted that during the pendency of the present writ petition, final order contained in Memo No. 940 dated 06.05.2022 has been passed by the Additional Chief Secretary, Education Department, Government of Bihar dismissing the departmental appeal, which was preferred by the petitioner against the impugned orders contained in Memo No. 427 dated 19.02.2021 and in Letter No. 643 dated 17.03.2021. Learned counsel further submitted that petitioner and another teacher, namely, Anand Kumar Poddar had obtained higher degree during the service period and obtained the promotion. Learned counsel further submitted that after holding of the proper enquiry, the District Education



Officer, Purnia vide Letter No. 346 dated 13.07.2017 submitted report after filing a charge-sheet against the petitioner and another teacher, which was framed in compliance of the direction of the Lokayukta and thereafter, as per the direction of the Lokayukta, steps have been taken against the petitioner and similarly situated teacher. There is no infirmity in proceeding against the petitioner as per the provision of Rule 43(b) of the Bihar Pension Rules, 1950. Learned counsel further submitted that inadvertently, it has been taken note of that disciplinary action was taken as per the provision of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and such infirmity cannot be of any held to the petitioner. On these grounds, learned counsel appearing on behalf of the State submitted that the present writ petition is fit to be dismissed.

ANALYSIS & CONCLUSION:

10. Heard the parties.

11. Having considered the rival submissions made on behalf of the parties, as well as, the pleadings made in the writ petition, counter affidavit, supplementary counter affidavit and their reply, the moot question, which falls for consideration in the present case is, whether, on the basis of the request made by the Lokayukta along with the enquiry report, the disciplinary



action taken against the petitioner, who had retired on 30.06.2013, after more than four years, the statutory period as provided under the provision of Rule 43(b) of the Bihar Pension Rules, 1950 can be sustained in the eye of law?

12. The record reveals that after the petitioner had become successful in obtaining masters degree, relevant entries were made in the service book of the petitioner (Annexure-P/7 to the writ petition), which was made as per the direction of the District Education Officer, on 01.04.1993. The entry shows that the petitioner had successfully passed with First Class in M.Sc. (Zoology) from Lalit Narayan Mithila University. The petitioner has brought on record the Letter dated 20.12.1986 by way of 'Annexure-P/3 to the writ petition' seeking permission for pursuing her studies and the same was forwarded by the Headmaster of the Jawaharlal Nehru Smarak High School, Gulabbag, Purnia, to the District Education Officer, Purnia, on 20.12.1986 itself. The District Education Officer, Purnia had also forwarded the application of the petitioner to the Director, Secondary Education-cum-Joint Secretary, Education Department, Government of Bihar vide Letter No. 411 dated 08.04.1987. In view of no negative action taken by the District Education Officer or the Director, Secondary Education at the



relevant point of time, it will be deemed that approval was accorded to the petitioner to pursue the classes. The petitioner has given information that she had attended morning class and the children never suffered because of her absence. As per the absentee, the petitioner was being paid her due salary regularly and during the entire period of service, no disciplinary action was taken for any misconduct against the petitioner.

13. It appears that the the Lokayukta took up action on the basis of a complaint petition filed by one Chitranjan Singh and based on the enquiry, disciplinary action has been taken after more than four years of retirement of the petitioner i.e. beyond the statutory period as provided under Rule 43(b) of the Bihar Pension Rules, 1950.

14. It is well settled law that any proceeding initiated on the basis of enquiry held on the direction of the Lokayukta, the State is obliged to take action in accordance with law. In the present case, the statutory provision of Rule 43(b) of the Bihar Pension Rules, 1950, prohibits any disciplinary action to be taken against the petitioner and in case of grave misconduct and misappropriation of fund, only in exceptional cases, on the basis of such recording by the State Government, action could have been taken.



15. The very initiation of the Disciplinary Proceeding in the present case has taken place as per the direction of the Hon'ble Lokayukta, Bihar in violation of the Rules. This Court in case of **Bipin Bihari Singh (supra)** has held that Hon'ble Lokayukta, Bihar, Patna, has no power to direct for initiation of Departmental/Disciplinary Proceeding against any Government Servant. It is worth to quote paragraphs no. 15, 16, 17, 21, 23, 24 and 27 of the judgment passed in case of **Bipin Bihari Singh (supra)**, which *inter alia* are reproduced hereinafter:

"15. In the background of the abovenoted facts, I proceed to answer the legal question, as noticed at the very outset, which the present writ application involves in the light of statutory provisions, dealing with jurisdiction of Lokayukta under the Act of 2011.

16. Before I refer to various provisions under the Act of 2011, I must mention that the Lokpal and Lokayuktas Act, 2013(hereinafter referred to as the 'Lokpal Act') (a Central Act), which received the assent of the President on 01.01.2014 i.e. subsequent to enactment of the Act of 2011, envisages, inter alia, establishment of Lokayukta for every State, if not so established, by law made by State Legislature, 'to deal with complaints relating to corruption against certain public functionaries'. Many of the provisions under Bihar Lokayukta Act, 2011 and Lokpal and Lokayuktas Act, 2013 are akin to each other. The preamble of Lokpal Act reads as under :-

"An Act to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

And WHEREAS India has ratified the United Nations Convention Against Corruption; and

WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption."

Now, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption."

17. The preamble of Bihar Lokayukta Act, 2011 makes clear the purpose behind enactment of the Act, viz. to provide for establishment of institution of Lokayukta, its powers



and functions and 'for expeditious investigation and prosecution relating to allegation involving corruption against public servants of all grades'. Chapter VII of the Act of 2011 lays down the procedure in respect of inquiry and investigation. Section 27 under Chapter VII of the Act of 2011 stipulates the action which may be taken on inquiry in relation to the public servants other than the Chief Minister or Ministers or members of the State Legislature. Since Section 27 of the Act of 2011 is one of the significant provisions to address the legal issues raised in the present writ application, the same is being reproduced hereinbelow :-

"27. Action on inquiry in relation to Public Servants not being Chief Minister or Ministers or Members of the State Legislature.-(1) Where after the conclusion of the inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (d), (e), (f), or (g) of sub-section (1) of Section 16, any officer authorized by Lokayukta shall-

(a) file a case in the Special Court and send a copy of the report together with its findings to the competent authority; and

(b) recommend to the competent authority for initiation of disciplinary proceedings under the rules of disciplinary proceedings applicable to such public servant;

(c) provide a copy of the report to the public servant or his representative;

(2) The competent authority shall, having regard to the recommendations of the Lokayukta within a period of thirty days of the receipt of recommendation under clause (b) of sub-section (1), initiate disciplinary proceedings against the delinquent public servant accused of committing offence under the Prevention of Corruption Act, 1988 and forward its comments on the report, including the action taken or proposed to be taken thereon, to the Chairperson ordinarily within six months of initiation of such disciplinary proceedings."

21. On conjoint reading of Sections 28A and 29 of the Act, I have absolutely no hesitation in reaching a definite conclusion that Lokayukta has no jurisdiction, acting on a complaint containing grievance of maladministration beyond submitting a report to the competent authority, as defined under Section 2(d) of the Act, prescribing the manner in which injustice or undue hardship has to be remedied or redressed. It is expected of the competent authority to examine the report and inform the Lokayukta, the action taken or proposed to be taken on the basis of the report. In view of clear language used in Section 28A of the Act, Lokayukta does not have any jurisdiction to issue any direction to the competent authority. The provision clearly stipulates that if, on receipt of report from the competent authority, in response to recommendations made by the Lokayukta, the Lokayukta is dissatisfied with the action taken or proposed to be taken, he can make 'a special report to the Governor of the State and inform the complainant in this regard'. Lokayukta does not have any other jurisdiction at all under the Act when the matter is on the basis of a complaint raising a grievance of maladministration.

23. Before I conclude, I must not lose sight of the



other powers and functions conferred on the institution of Lokayukta under Section 38 of the Act, which reads as under :-

*“38. **Other power and function.**- Lokayukta shall have also following functions and powers:-*

1.(a) If the Lokayukta prima facie is satisfied on the basis of preliminary inquiry of investigation that a lease, license, permission, contract or agreement was obtained by corrupt means including misfeasance, misrepresentation, fraud and coercion, it shall recommend cancellation or modification of the lease, license, permission, contract or agreement and it may also recommend blacklisting of firm, company, contractor or any other person involved in act of corruption. The above said recommendations shall be complied by the public authority or be rejected by him within a month of receipt of recommendation.

(b) If the Lokayukta in course of any investigation is satisfied that any preventive action is necessary in public interest to prevent the ongoing incident of corruption it may make recommendation to the public authority concerned either to stay the implementation/ enforcement of any decision or take any such action as is recommended by the Lokayukta. The aforesaid recommendation shall be complied by public authority or be rejected by him within fifteen days of receipt of recommendation.

(c) to monitor the investigation of offences under Prevention of Corruption Act, 1988 involving any act of corruption, for the cases initiated on behalf of the Lokayukta.

(d) to initiate prosecution before a Special Court established under the Prevention of Corruption Act, 1988 and the Bihar Special Courts Act, 2009, for the cases initiated on behalf of the Lokayukta.

(e) to appoint prosecutors and Senior Counsels under Prevention of Corruption Act, 1988 or under the Bihar Special Court Act, 2009 or under this Act, for the cases initiated on behalf of Lokayukta.

(f) to get the Investigating Officer trained in modern methods of scientific investigation.

(g) to enquire modern equipments necessary for proper investigation.

(h) to receive complaints against any officer or staff of Lokayukta.

(i) to ensure the integrity of its functionaries and impose punishments of dismissal, removal and reduction in rank.”

24. There is no jurisdiction, under the aforesaid provision too, vested in the institution of Lokayukta to direct for initiation of a disciplinary proceeding, unless requisite conditions envisaged in Section 27 of the Act of 2011 are available.

27. If a statutory authority assumes to act in a case over which the law does not give it authority, the proceeding and adjudication will be altogether void. An authority has jurisdiction of any subject matter if, by the law of its organization, it has authority to take cognizance of, try, and determine cases of that description and not otherwise. (See A Treatise on the Constitutional Limitations by THOMAS M. COOLEY)."



16. The Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Umesh***, reported in **(2022) 6 SCC 563**, in paragraph Nos.16 to 23, has held that:

"In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether;

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(v) the penalty is disproportionate to the proven misconduct."

17. Hence, the dictum laid down by the Hon'ble Apex Court in the above case, clarifies that if the findings of the disciplinary authority suffers from perversity, then this Court can interfere with the said order.

18. The Apex Court in the case of ***Sarvepalli Ramaiah v. District Collector, Chittoor***, reported in **(2019) 4SCC 500** has held as follows:-

"40. Administrative decisions are subject to judicial review under Article 226 of the Constitution, only on grounds of perversity, patent illegality, irrationality, want of power to take the decision and procedural irregularity. Except on these grounds administrative decisions are not interfered with, in exercise of the extraordinary power of judicial review.43. Judicial review under Article 226 is directed, not against the decision, but the decision-making process. Of course, a patent illegality and/or error apparent on the face of the decision, which goes to the root of the decision, may vitiate the decision-making process..."



19. In the above background, I hold that the office of the Lokayukta is on a much higher pedestal than that of an Enquiry Officer in a Departmental Enquiry. If the report submitted by the Lokayukta is declined to be accepted by the Competent Authority, who alone has the discretion either to entrust or to not entrust the enquiry. In view of the above fact, I find that the Lokayukta could not have directed to take legal action against the petitioner.

20. I find that the petitioner has in fact enhanced her educational qualification and became more experienced science teacher and the student at large got benefited, merely for the reason that permission was not accorded to the petitioner to pursue studies, for which, the petitioner should not be penalized. The action is also barred under Section 43(b) of the Bihar Pension Rules, 1950, which make the impugned orders contained in Memo No. 427 dated 19.02.2021 and Letter No. 643, (Est.), dated 17.03.2021 and the order passed in appeal contained in Memo No. 940 dated 06.05.2022, unsustainable in the eye of law and the same are hereby set aside and quashed.

21. As the action has been held to be illegal and without jurisdiction, the petitioner is restored back to her



original position and if any pension is due for any period, the same is required to be paid to the petitioner forthwith. The law in this regard is well settled by the Apex Court in the case of **D. S. Nakara & Ors. Vs. Union of India**, reported in **(1983) 1 SCC 305**, in which, it has been held that Article 300A of the Constitution of India mandates that pension is a property.

22. Accordingly, the present writ petition stands allowed.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	17.04.2025
Transmission Date	N/A

