

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14257 of 2021

Shikha Rani Wife of Sri Rajesh Kumar Sinha, Resident of Mohalla - Mahesh Nagar, House No. - 17, Road No. 3A, P.O. - Keshri Nagar, P.S.- Patliputra, Town and District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Budh Marg, Patna.
4. The Regional Deputy Director of Education, Patna Division, Patna -cum-Disciplinary Authority.
5. The District Education Officer, Patna.
6. The District Programme Officer (Establishment), Patna -cum-Enquiry Authority.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Purushottam Kumar Jha, Advocate Mr. Bipin Bihari Singh, Advocate Mr. Shyama Kant Singh, Advocate
For the Respondent/s	:	Smt. Binita Singh (SC-28)

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 08-04-2025

Heard Mr. Purushottam Kumar Jha, learned counsel
appearing on behalf of the petitioner and Mrs. Binita Singh,
learned SC-28 for the respondent/s.

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

*"1. That, the present writ petition is
being preferred for issuance of writ in the
nature of certiorari for quashing the order
passed by Regional Deputy Director of
Education, Patna Division, Patna issued/*



communicated under Memo No. 222 dated 05.02.2020 whereby the proceeding pending against her was converted under Rule 43B/139 of the Bihar Pension Rules retrospectively with effect from 31.12.2018 and further prayer regarding quashing of consequential order of punishment communicated under Memo No. 818 Patna dated 12.07.2021 whereby and where under 100 % Pension, Gratuity, Earned Leave declare as zero without considering the facts, law and points urged under the reply of second show-cause as well as the applicability of the required process/provision especially under Bihar Pension Rule and for other necessary relief/reliefs to the basis of facts and circumstances of the case as stated, enumerated and discussed hereinafter."

3. Petitioner is aggrieved by the order of punishment contained in Memo No. 818 dated 12.07.2021 issued under the signature of Regional Deputy Director, Patna Division, Patna, by which, 100% Pension, Gratuity and Earned Leave of the petitioner has been declared as zero.

4. Learned counsel appearing on behalf of the petitioner submits that the relief sought for in the present writ petition is covered by the decision of a Division Bench of this Court passed in ***L.P.A. No. 1219 of 2023 (Kamini Kumari vs. the State of Bihar & Ors)*** and other analogous cases in view of the fact that the petitioner had earlier filed CWJC No. 20408 of 2016 which was dismissed on 30.06.2017 and the petitioner had preferred appeal against the said order vide L.P.A. No. 1019 of



2017, which was disposed of on 06.11.2017 by passing following observation/direction in paragraph no. 6, which *inter alia* is as follows:

"6. In our considered view, once in the case of Shanti Kumari and others impugned order was quashed, the writ court in the present writ petition, CWJC No. 20408 of 2016, should have followed the judgment rendered in the case of Shanti Kumari and others and granted similar benefit to the appellant. This having not done, we allow this appeal, quash the order dated 30th June, 2017 passed by the writ court in CWJC No. 20408 of 2016, allow the writ petition and dispose it of in terms of the order dated 17.1.2017 passed by the writ court in the case of Shanti Kumari & others, CWJC No. 17904 of 2016 and its analogous cases, as indicated hereinabove. The appellant shall also be identically treated and all benefits granted in accordance to the order passed on 17.1.2017 passed in CWJC No. 17904 of 2016 (Shanti Kumari Vs. The State of Bihar and others) and its analogous cases."

5. In above background, learned counsel submits that in paragraph no. 11 of the judgment dated 27.02.2024 passed in *Kamini Kumari (Supra)*, the Division Bench of this Court has discussed and considered the order dated 17.01.2017 passed in ***CWJC No. 17904 (Shanti Kumari vs. State of Bihar & Ors.)***. He submits that once the Division Bench has taken into consideration of the direction made in *Shanti Kumari (Supra)*, the present writ petition deserves to be disposed of in light of the order dated 27.02.2024 passed in *Kamini Kumari (Supra)*. Learned counsel further submitted that though the departmental enquiry was held against the petitioner, but no document was



supplied along with '*Prapatra-K*' to the petitioner. Otherwise also, in absence of having supplied the evidences to the petitioner, the case of the petitioner is covered by the decision of the Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank*** reported in ***(2009) 2 SCC 570***.

6. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner was appointed as an Assistant Teacher under Lower Subordinate Education Service Cadre (hereinafter referred to as the 'LSES Cadre') vide Memo No. 8421-24 dated 08.12.1988 issued by the School Inspector-cum-Deputy Director Education, Patna, Bihar and had joined on 09.12.1988 at Government Girls Middle School, Sitamarhi. This Court had directed C.B.I. Enquiry in ***CWJC No. 9847 of 1998 (Brajesh Kumar Singh vs. State of Bihar & Ors.)*** vide order dated 18.12.1998. The C.B.I. submitted its report on 03.11.2004 against 305 teachers in which appointment of only 27 teachers were found regular whereas appointment of 278 teachers were found to be illegal/irregular. Actions were taken against the illegal/irregular appointed teachers and against those officials, who had made such appointment. Though the petitioner applied for the post advertised in March, 1988, but her appointment was made directly and the criteria, as required for regular



appointment was not followed. In view of the said development, the Director, Secondary Education, Bihar issued direction vide Letter No. 1674 dated 17.08.2016 to all the Regional Deputy Director of Education to locate such L.S.S. teachers (Female Cadres) appointed during the period 1980-1998 and take legal action in accordance with law. The order of termination of the petitioner was passed by the respondent no. 4 (the Regional Deputy Director of Education, Patna Division) contained in Memo No. 1471 dated 18.11.2016 against which, petitioner had preferred CWJC No. 20408 of 2016 and the same was dismissed vide order dated 30.06.2017. Thereafter, the petitioner had preferred LPA No. 1019 of 2017 against the order dated 30.06.2017 passed in CWJC No. 2040 of 2016, which was disposed of on 06.11.2017. The petitioner was issued show-cause vide Letter No. 206 dated 15.02.2018 directing the petitioner to file reply. The Regional Deputy Director, Patna Division Patna, initiated departmental proceeding against the petitioner and the memo of charge was issued vide Memo No. 427 dated 28.03.2018 and the District Programme Officer (Establishment) Patna was appointed as Enquiry Officer and the Regional Deputy Director of Education, Patna Division, Patna was appointed as Presenting Officer.



7. Learned counsel further submitted that the petitioner had retired on 31.12.2018 and the departmental proceeding pending against the petitioner was converted into proceeding under Rule 43(b)/139 of the Bihar Pension Rules, 1950 (hereinafter referred to as 'the Rules, 1950'). The Enquiry report was submitted vide Memo No. 1730 dated 19.06.2020 and the second show-cause notice was issued to the petitioner by the respondent no. 4 vide Memo No. 986 dated 31.07.2020 annexing the enquiry report and directed the petitioner to file reply within time. The petitioner had submitted her explanation on 08.09.2020 before the respondent no. 3 (the Director, Secondary Education, Government of Bihar, Patna) without explaining the charges of enquiry report of C.B.I. Learned counsel further submitted that petitioner had entered into service on temporary basis by the School Inspector-cum-Deputy Director Education, Patna, Bihar, who was not competent to make appointment for the L.S.S. post. After considering the reply, the Disciplinary Authority passed order in terms of provision contained in Rule 43(b)/139 of the Rules, 1950 vide Memo No. 818 dated 12.07.2021 withholding the 100% Pension, Gratuity and Earned Leave of the petitioner. In the above background, learned counsel submitted that the case of



the petitioner is not covered by the judgment dated 27.02.2024 passed in L.P.A. No. 1219 of 2023, *Kamini Kumari (Supra)*.

8. Heard the parties.

9. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the Division Bench vide order/judgment dated 27.02.2024 passed in *Kamini Kumari (Supra)* had examined the case of the teachers similar to the petitioner, who were appointed directly by the School Inspector-cum-Deputy Director Education, Patna, Bihar after the advertisement. The petitioner was appointed on 08.12.1988 and had joined the post of Assistant Teacher on 09.12.1988 and had retired on 31.12.2018. The petitioner was receiving pension till the impugned order dated 12.07.2021 contained in Memo No. 818 (Annexure-12 to the writ petition) was passed. I need not to deal with the previous order against which the petitioner had preferred CWJC No. 20408 of 2016 and LPA No. 1019 of 2017, in which, direction was issued to consider the case of the petitioner in light of *Shanti Kumari (Supra)*. I find it apt to take note of the operating part contained in paragraphs no. 5 and 6 of the judgment dated 06.11.2017 passed in LPA No. 1019 of 2017, which *inter alia* are as follows:

"5. In the case of *Shanti Kumari and Ors.* also the issue of report submitted by the CBI has been considered by a Bench of this Court and it



has been held that similar enquiry was conducted behind the back of the employees without hearing them and without granting any opportunity, the action taken, which has effect of terminating the services which was granted to them in the year 1988, is unsustainable. The same principle applies in the case of the present appellant also because the action is taken on the basis of enquiry by the CBI.

6. In our considered view, once in the case of Shanti Kumari and others impugned order was quashed, the writ court in the present writ petition, CWJC No. 20408 of 2016, should have followed the judgment rendered in the case of Shanti Kumari and others and granted similar benefit to the appellant. This having not done, we allow this appeal, quash the order dated 30th June, 2017 passed by the writ court in CWJC No. 20408 of 2016, allow the writ petition and dispose it of in terms of the order dated 17.1.2017 passed by the writ court in the case of Shanti Kumari & others, CWJC No. 17904 of 2016 and its analogous cases, as indicated hereinabove. The appellant shall also be identically treated and all benefits granted in accordance to the order passed on 17.1.2017 passed in CWJC No. 17904 of 2016 (Shanti Kumari Vs. The State of Bihar and others) and its analogous cases."

10. Having perused the order dated 27.02.2024 passed in *Kamini Kumari (Supra)*, In paragraph no. 11, the Division Bench has taken into consideration the fact that some of the petitioners of the writ petition being CWJC No. 17904 of 2016 were the appellant of LPA No. 1219 of 2023 and analogous cases, who were found to be deprived of a reasonable opportunity to canvass their respective cases. Taking into consideration the cases of those petitioners, the Division Bench has considered the case in detail and has dealt with the provision of Rule 43(b) and 139 (c) of the Rules, 1950 in paragraphs no.



30 and 31 of the judgment dated 17.02.2024 in *Kamini Kumari (Supra)*, which *inter alia* are reproduced hereinafter:

"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.

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."

11. Further, I find it apt to refer paragraphs no. 36 to 48 of the judgment dated 17.02.2024 in *Kamini Kumari (Supra)*, which, *inter alia*, are reproduced hereinafter:

"36. With respect to the above petitioner, we have to specifically notice the CBI report produced at Annexure-10 which is an extract of the findings, against some of the appointees, one of whom was the petitioner in the present case. Her date of birth was noted as 30.08.1959, and her age noticed was 29 years 6 months, as on the date of her



appointment. It is seen from the last column that the petitioner was recommended for appointment by a select committee against Advertisement No. 88. The objection against her appointment was with respect to her being overaged at the time of appointment, and the roster clearance not having been obtained as also the reservation Rules not followed. We cannot but notice that serial no. 133 to 136 were all appointed under the very same notification, under which the petitioner was also appointed. Even in the case of Serial No. 133 to 136, it has been noticed that reservation rules were not followed and roster clearance was not obtained; still their appointments were considered regular, while the petitioner's appointment was found to be irregular, based on the ground of her being overaged.

37. It has been demonstrated clearly that the petitioner was below the age of 30 years at the time of her appointment; which was the maximum age as per the advertisement itself. Even the CBI report shows her age less than 30 years, when she was appointed. The entire proceedings smacks of victimization and we find absolutely no reason to uphold the inquiry report. We also have to notice that in the present case there was an inquiry conducted, in which she was exonerated and she retired from service. The second inquiry was initiated without notice to her and after her retirement. As found above, in the other appeals, there could not have been an inquiry unless there is sanction obtained from the Government and the incident complained of is within four years prior to the date of retirement. Our findings in the earlier appeal, with respect to Rules 43 & 139 clearly applies and the impugned orders are set aside.

38. LPA No. 1253 of 2023 arises from CWJC No. 439 of 2022, in which the appellant was the 3rd petitioner. The initial appointment of the petitioner, as revealed from the writ petition, was made by Annexure-3, based on the advertisement published on 24.03.1988, in a vernacular newspaper. The petitioner was proceeded with by memo of charges issued as Annexure-21 for the first time on 27.10.2018. The allegation was that the CBI, in its report, found her appointment to be irregular. The inquiry report is produced as Annexure-30 which is dated 05.02.2019. The inquiry report indicates that the proceedings were initiated on the recommendation of the CBI for action against the irregular appointment of teachers. It was stated that the CBI found the appointment of the petitioner to be irregular, on the ground that the appointment



was made completely on temporary basis. Despite the inquiry report produced as Annexure-30, , the Disciplinary Authority cum Regional Deputy Director of Education, Munger Division, by Annexure- 31 found the petitioner competent to be continued in the post. The petitioner retired from service on 30.11.2020 and the pension payment order evidencing the same is produced as Annexure-32. As in the earlier case, after retirement, the second show cause notice was issued, as seen from Annexure-35, which is dated 18.12.2021.

39. In the counter affidavit, filed by the respondent no. 2, Regional Deputy Director of Education, it is stated that the second show cause notice has been issued to the petitioner as produced at Annexure-A dated 12.03.2022, on receipt of which further proceedings would be taken. It is to be emphasized that there cannot be any further proceedings after retirement, without sanction and with respect to the appointment, which was more than three decades back. Annexure 31 order of the Disciplinary authority was also in operation. What has been stated in LPA No. 1257 of 2023, squarely applies in the present case also.

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).

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 Bablani reported 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.

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.

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.

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:-

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.

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.

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.

47. The petitioners/appellants would be deemed to have retired from service and their pension would be restored with immediate effect. The petitioners shall be paid pension from March-



2024 and the arrears for the period when they were denied of such pension, by reason of the impugned orders in the writ petition, shall be paid within a period of four months from today. The State shall be mulcted with further liability of interest at the rate of 5 per cent i.e from the date of stoppage of pension, if the arrears are not paid within four months. If interest is attracted by reason only of the delay caused in disbursing the arrears, then the State would be entirely at liberty to proceed against those officers who are responsible for the delay and recover the interest portion from them.

48. We cannot but express our anguish, in the manner in which the inquiry proceedings were initiated and proceeded arbitrarily, flouting all procedural requirements. There were even instances of the disciplinary authority finding the individual liable to be continued, after which, again without notice subsequent inquiry report was obtained and punishment imposed. The State, being a welfare state has an obligation to its employees. The persons appointed were appointed decades back and continued in the employment of the State. Even if the CBI found some irregularities, it was for the State to meticulously examine whether such irregularities existed and if it did, whether it was expedient to take action against the petitioners, especially considering the passage of time and the fact that the State had extracted work from such persons in the intervening years. There is also no complaint raised against the appellants who were teachers, teaching in various schools. There is not even one instance pointed out when their services were found to be unsatisfactory. None of them are accused of any misconduct, four years prior to their retirement, or at any time before, in their total service. The State having acted in such an arbitrary manner; put the petitioners, who retired from service, to unnecessary agony, despair and prejudice by denying the entire pension for long years; which is held to be a matter of right and not a bounty paid by the State. On the above reasoning, we are of the opinion that the State should be imposed with costs which is quantified at Rs. 5,000/- in each of the appeals, which shall be paid along with the arrears."

12. I find that the case of the petitioner is covered by
the order/judgment dated 27.02.2024 passed in LPA No. 1219 of



2023, *Kamini Kumari (Supra)*, and for the reason recorded in the aforesaid judgment, the impugned order contained in Memo No. 818 dated 12.07.2021 is hereby set aside and quashed for considering the case of the petitioner afresh in light of the aforesaid judgment.

13. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

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

