IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 286 of 2019

Sunita Mrinalini Tirkey, aged about 61 years, W/o Late Kant Kumar Kujur, R/o Chuhwatoli near Khadgarha Bus Stand, P.O. Kantatoli, P.S.-Lalpur, Ranchi, Jharkhand

..... Petitioner

Versus

1.The State of Jharkhand through Secretary, Human Resources Department, Project Building, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, Dist. Ranchi, Jharkhand

2.Director, Secondary Education, Government of Jharkhand, Project Building, Dhurwa, P.O.-Dhurwa, P.S. Jagarnathpur, Dist.Ranchi, Jharkhand

3.Regional Deputy Director, Education, South Chotanagpur Division, Ranchi P.O + P.S.-Ranchi, District Ranchi, Jharkhand

4.District Education Officer, Ranchi, P.O. + P.S.-Ranchi, Dist: Ranchi, Jharkhand

5.Accountant General, Jharkhand, North Office Para, Doranda, P.O. + P.S.-Doranda, Dist. Ranchi, Jharkhand

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Avinash Dubey, Advocate
For the Resp.1 to 4 : Mr. Manish Kumar, Sr.S.C.I
Mr. Ravi Kerketta, A.C. to Sr.S.C.II
For the Resp. No.5. : Mr. Sudarshan Shrivastav, Advocate

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

This writ petition has been filed on behalf of the petitioner for following reliefs:

(i) The petitioner prays for issuance of appropriate writ/order/direction directing the respondents to send to this Hon'ble Court all records appertaining to issuance of order No. 06/R.V 01-

10/2018/2975, dated 29.10.2018 issued by Respondent No.2 whereby and whereunder petitioner's entire pension has been directed to be stopped with immediate effect under rule 43 (a), 43 (b) and 139 (c) arbitrarily, illegally, without proper opportunity of being heard and against the settled principles of law although the petitioner has retired from the services of State Government in the year 2017 after serving for nearly 33 years as teacher without there being any adverse remark as against her and/or

(ii) For a further prayer for issuance of appropriate writ/order/direction for quashing of order No. 06/R.V 01-10/2018/2975, dated 29.10.2018 (i.e. Annexure-5) passed by Respondent No.2 as the said order is completely illegal, arbitrary and the against the settled principle of law and/or

(iii) For a further prayer for a direction upon the concerned respondent to continue payment of future pension amount to the petitioner as per law and also to pay the back pension amount with interest, if any stopped and for other ancillary reliefs:-

2. Heard Mr. Avinash Dubey, learned counsel for the petitioner and Mr. Nawal Kishore Pandey, A.C. to S.C.(L & C)-I for the State and Mr. Sudarshan Shrivastav, learned counsel for the Accountant General.

3. It is submitted that the impugned order dated 29.10.2018 (i.e. Annexure-5) issued by Respondent No. 2 is illegal, arbitrary and not sustainable in the eye of law.

It is submitted that neither the Enquiry Report nor the C.B.I. report were ever served upon the petitioner.

It is submitted that the petitioner had retired during the Departmental proceeding and therefore, the Departmental Proceeding was converted to proceeding under Rule 43(b) of the Jharkhand Pension Rules without any formal order or Notice to the petitioner and 100% Pension has been withheld. It is submitted that no show-cause Notice has been given before forfeiting 100% Pension. It is submitted that the impugned order is absolutely illegal, arbitrary, unconstitutional and in colourable exercise of power and, hence, the same may be set aside.

4. On the other hand, learned counsel for the State has submitted that the impugned judgment is fit and proper and no interference is required from this Court.

It is submitted that the petitioner was appointed by the District Inspectress of School, Palamu vide memo no.43, dated 19.01.1985 (i.e. Annexure-A) in Govt. Girls Middle School, Latehar on temporary basis in Matric Trained Scale 580-860/- from the date of joining in the school without following proper procedure and without having the power and jurisdiction for such appointment during the Joint Bihar period in Lower

Subordinate Education Service Cadre, which is a State Cadre Post.

It is submitted that after ten months of joining in the school the petitioner was transferred from Govt. Girls Middle School, Latehar to Govt. Girls High School, Ranchi on the same post and same scale by School Inspectress Patna vide memo no. 6180-83 dated 31.10.1985 (i.e. Annexure-B) where the petitioner had joined on 20.11.1985.

It is submitted that 107 working teachers in LSS (teaching branch) were promoted on Sub-ordinate Education Service Cadre post vide memo no. 386 dated 17.05.1990 (i.e. Anneuxre-C) issued by the Director, Secondary education, Bihar, Patna (including the petitioner), whereby after promotion, the petitioner had been posted in Govt. Girls Middle School, Chaibasa against the vacant post of Assistant teacher.

It is submitted that the aforesaid promotion order was partially amended by the Director, Secondary Education, Bihar, Patna vide Memo No. 425 dated 04.06.1990 for the purpose of changing of place of posting of the teachers, whereby the petitioner's place of posting due to promotion had been changed and had been posted on the post of Lecturer in Govt. Women's Primary Teacher Education College, Govindpur, Dhanbad vide memo no. 386 dated 17.05.1990. The said for letter was again modified by the Director, Secondary Education, Bihar, Patna vide memo no. 667 dated 30.08.1990 where by place of posting of 9 (nine)

teachers (including the petitioner) was modified whereby the petitioner was posted on the post of Assistant Teacher in Govt. Girl's High was School, Ranchi.

Photocopy of memo no. 425 dated 04.06.1990 and memo no. 667 dated 30.08.1990 has been enclosed as Annexure-"D" series.

It is further submitted that as per rule-84 of the Bihar Education code (adopted by the State of Jharkhand) the Regional Deputy Director of Education-Inspectress of schools or District, Education officer has no power to appoint one in Lower Subordinate Education Service post, but the petitioner was wrongly appointed in the pay scale of Matric trained i.e. Rs. 580-960. Hence, appointment of the petitioner is "ab-initio void".

It is submitted that those working teachers who were promoted vide Notification dated 09.07.1991 (i.e. Annexure-F) was given promotion with condition that the benefits of pay scale on promotion for the period 20.07.1985 to 17.05.1990 will be given only after due approval of Finance Department.

It is submitted that due to delay of payment, a writ petition, bearing C.W.J.C. No. 1690/1997 was filed by one Sushma Kumari Gope and Others, before the Patna High Court. In the said

writ, the Director, Secondary Education, Bihar, Patna had filed Affidavit mentioning/stating therein that on and after 1980, the Lady Teachers in Govt. Girls Middle School have wrongly and illegally been appointed and they have been irregularly given promotion, hence, it was decided by the Bihar State to handover the matter for enquiry to the Cabinet Vigilance Department. The Hon'ble Patna High Court had passed order to take final decision in this matter and make the payment of arrears to the petitioners within two months.

It is submitted that the State Government recommended the case/matter to the Cabinet Vigilance Department for investigation/ enquiry about the illegal/irregular appointment of 300 Assistant Teachers and illegal/ irregular promotion of 160 teachers of Lower Subordinate Education Service.

It is submitted that a writ petition, bearing C.W.J.C. No. 9847/1998 was also filed by *Brajesh Kumar & Ors* before the Patna High Court and the Hon'ble High Court had passed the order on 18.12.1998 (i.e. Annexure-G), whereby Hon'ble High Court remanded the matter for C.B.I. enquiry to investigate and submit a report on the subject matter of irregular appointment of several teachers.

It is submitted that as per order passed by the Hon'ble Patna High Court, entire matter was enquired by the C.B.I. and the C.B.I. submitted

its report. On receipt of C.B.I. enquiry report, the Deputy Secretary of Home Department (Police) Bihar, Patna had recommended vide letter no. 3371 dated 12.04.2005 (i.e. Annexure-H) to the Secretary, Secondary Education Department, Bihar, Patna to take action against the accused person as per report of C.B.I. case no. P.E.- 3371/2001.

It is submitted that after bifurcation of Bihar State, State of Jharkhand has come into existence w.e.f. 15.11.2000 and services of 48 such teachers out of 308, came under the jurisdiction of state of Jharkhand which includes the petitioner also. Thus, the Director, Secondary Education, Bihar, Patna, vide his letter no. 29/2005/2688 dated 18.12.2007 (i.e. Annexure-"I"), enclosing the C.B.I. Report, forwarded the matter regarding irregular and illegal appointment and promotions of 48 lady teachers of sub-ordinate education cadre to Director, Secondary Education, Jharkhand, Ranchi to take necessary action.

It is submitted that as per the finding of C.B.I. investigation report the appointment of the petitioner was irregular. Her service record is not available. She was appointed without following the proper procedure for appointments by the District Inspectress and moreover, District Inspectress of schools were not competent to make appointments on the post of Assistant Teachers in Lower Subordinate

Education Service being a State cadre post. Neither advertisement was made in any local newspaper nor roaster clearance was obtained nor reservation rules were followed. Further, there is no Select Committee proceedings available on record for the selection through interview/test. Hence, on receipt of C.B.I. enquiry report through letter no. 29/2005/2688 dated 18.12.2007 of Director, Secondary Education, Bihar, Patna for conducting departmental proceeding against the petitioner, the petitioner was put under departmental proceeding by the respondent authorities i.e. Director, Secondary Education, Jharkhand, Ranchi vide memo no. 4135 dated 07.09.2010, whereby the Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi was made Enquiry Officer and District Education Officer, Ranchi was made presenting officer (i.e Annexure-2/1 of the writ petition)

It is submitted that on the same date a memo of charges was issued to the petitioner vide memo no. 4136 dated 07.09.2010 (i.e. Annexure-J) by the Director, Secondary Education, Jharkhand for departmental enquiry.

It is submitted that in pursuance of aforesaid letter the petitioner was served the copy of the same vide memo no. 6910 dated 30.12.2010 issued by District Education Officer, Ranchi and also by Regional Dy. Director of Education, South Division,

Ranchi vide his letter no. 45 dated 17.01.2011, whereby the petitioner was requested to submit her reply within 15 (fifteen) days as per memo of charges enclosed.

Photocopy of Memo No.6910 dated 30.12.2010 and letter no. 45 dated 17.01.2011 are enclosed as Annexure-"K"&"K/1".

It is submitted that petitioner had submitted her show cause reply through Principal, Govt. Girl's High School, Bariatu, Ranchi vide letter no. 42 dated 31.01.2011 on 04.02.2011 in pursuance of Letter No. 6910 dated 30.12.2010 to the Regional Deputy Director, South Chhotanagpur Division, Ranchi during departmental proceeding period. After four months, the petitioner again directly submitted her show cause reply on the 21.06.2011 before RDDE, South Chhotanagpur Division, Ranchi-cum-Enquiry Officer.

It is submitted that Photocopy of Letter No. 42 dated 31.01.2011 and show cause reply of the petitioner dated 21.06.2011 are enclosed as Annexure-"L"&"L/1".

It is submitted that on the basis of records available with the Enquiry Officer and reply of the petitioner, the Enquiry Officer enquired the matter and submitted his enquiry report vide Letter No. 1023 dated 18.08.2011 (i.e. Annexure-M) to the Director, Secondary Education, Jharkhand.

It is submitted that as per C.B.I. enquiry report and departmental enquiry report submitted by the Regional Deputy Director, South Chhotanagpur Division, Ranchi after scrutinizing the matter available on record, the appointment of the petitioner was found irregular and illegal hence, second show cause notice was issued by the answering respondent to the petitioner vide memo no. 1142 of the dated 03.05.2012 (i.e. Annexure-'N'). The petitioner had submitted her reply to the second show cause notice on 30.04.2013 through her Principal, Girl's +2 High School Bariatu, Ranchi in which the petitioner failed to submit proper records with regard to her appointment such as publication of advertisement of post in local newspaper or recommendation of her name through employment exchange, roaster clearance and compliance of reservation rules etc. and also any evidence regarding the legality of her appointment, hence her second show cause reply was found unsatisfactory and not acceptable.

It is submitted that considering all the aforesaid facts available on records i.e. C.B.I. investigation report, departmental enquiry report submitted by Regional Deputy Director of Education, South Chhotanagpur Division, Ranchi-Cum-Enquiry Officer and reply to the Second Show Cause, it was found that the petitioner was not appointed by the

competent authority. No advertisement was published in the Local News Paper, no roaster clearance was made and reservation policy was also not followed, hence the appointment of the petitioner was found irregular and illegal.

It is submitted that in the meantime as per office record, the petitioner retired from service on 30.06.2018 during the pendency of departmental proceeding and retiral benefits have been sanctioned and paid to her.

It is submitted that on the basis of enquiry report submitted by the C.B.I. and the then RDDE, opinion was sought, from the Law Department, Govt. of Jharkhand and the Law Department opined that appropriate action may be taken based on the report submitted by the C.B.I. and the RDDE after following due process of law.

It is submitted that since the service of the petitioner is "ab initio void", therefore it was decided to dispose of departmental proceeding pending against the petitioner by inflicting the punishment order of withholding cent percent pension of the petitioner as per the provisions made in rule 43(a), 43(b) and 139 (c) of Jharkhand Pension Rules and accordingly Memo No. 2975 dated 29.10.2018 has been passed which is proper, justified and legal in the eye of law.

It is submitted that since all the allegations made against the petitioner have been found proved by the C.B.I. as well as the Enquiry Officer, hence, the punishment order has been rightly issued vide Memo No. 2975 dated 29.10.2018 and hence, the present writ petition is not maintainable and it is liable to be dismissed.

5. It is submitted by the learned counsel for the Respondent No. 5, i.e. the Accountant General that the Office of the Accountant General will take necessary steps in the light of the judgment of this Court.

6. Perused the records and heard the submissions of both sides.

7. It appears that the petitioner had joined as an Assistant Teacher in the Govt. Girls Middle School, Latehar (Palamu) on 21.01.1985, pursuant to the office order dated 19.01.1985 issued from the office of District School Inspector, Palamu (in the erstwhile State of Bihar) after being duly selected.

8. It appears that thereafter the petitioner worked as a teacher and during course of her employment, she was transferred to various schools and she served with full dedication and devotion without there being any complaint regarding her performance as a teacher.

9. It further transpires that while serving as Assistant Teacher in the State Girls High

School, Bariatu, Ranchi, petitioner without any prior show cause was put under departmental proceedings on the basis of some C.B.I enquiry report, vide order No. 4135, dated 07.09.2010, issued by Respondent No.2 and Memo of Charge was also issued to her vide Memo No. 4136, dated 07.09.2010.

Photocopy of order No.4135,dated 07.09.2010 and Charge Memo No. 4136, dated 07.09.2010 are enclosed as Annexure-2 & 2/1.

10. It transpires that thereafter, petitioner was issued Letter No. 45, dated 17.01.2011 (i.e. Annexure-3) by Respondent No.3, asking her to reply to the charge memo issued to her pursuant to her being put to departmental proceedings.

11. It has been submitted by the learned counsel for the petitioner that though she was informed regarding departmental proceeding initiated against her on the basis of a C.B.I. report, but as required, she was not served neither the copy of the said C.B.I report nor the copy of the departmental enquiry report nor the documents which are the basis of departmental enquiry and the impugned order, which is bad in law as 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 must be supplied.

12. It is further evident from the perusal of impugned order dated 29.10.2018 -

(i.e. Annexure-5) that opinion from the learned Advocate General has also been sought by the concerned respondents.

13. Regarding non-supply of the documents, although the learned counsel for the respondents contended that the C.B.I. report etc. have been served upon the petitioner, but this contention cannot be believed as the respondents have to prove the actual service of enquiry report and C.B.I. report and the related documents upon the petitioner and in absence of proof of service of C.B.I. report and Enquiry report by the State it can be presumed that C.B.I. report has not been served upon the petitioner by the respondents and therefore, it is evident that the impugned order dated 29.10.2018 has been passed in violation of the well settled 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.

14. 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**, **62** and **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."

15. From perusal of the impugned order dated 29.10.2018, it appears that the appointment of petitioner was held irregular vide said impugned order on the ground that the petitioner could not produce any evidence with respect to fulfilment 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.

16. 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 Ghanshyambhai v. Ahmedabad Municipal Corporation, (2007) 8 SCC 644 (Trivedi Himanshu Ghanshyambhai) 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."

17. It transpires that despite the aforesaid facts of non-supply of documents, petitioner submitted her reply before Respondent No.3 contending that her appointment was very much legal and has been made in accordance with law and that no rule has been violated and that other issues relating to roster clearance and procedure could only be answered by the appointing authority.

Photocopy of the reply dated 21.01.2011 submitted by the petitioner has been enclosed as Annexure-4 to this application.

18. It further transpires that while passing order dated 29.10.2018 Respondent No.2 failed to consider the fact that it is the respondents who are the custodian of the entire service record of the petitioner and the appointing authority as well as

selection committee were all employees of the respondents and as such they were the competent persons to give evidence on the point of roster clearance, reservation and other rules. However, they were never examined nor any document was brought on record.

19. It transpires that apart from the fact that the petitioner was not provided the C.B.I. report as well as the departmental enquiry report, she was also neither examined nor any authority concerned was ever examined in the so-called departmental proceeding and impugned order has been passed mainly based on 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** and ***State of Jharkhand and Ors. Versus Amar Kumar Sinha*** **(**vide order dated 13.03.2023 passed in **L.P.A. No. 212 of 2021** by the Hon'ble Division Bench of this Court),

20. 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."*

21. It has been held in the case of ***State of Jharkhand and Ors. Versus Amar Kumar Sinha*** passed in **L.P.A. No. 212 of 2021** vide order dated 13.03.2023 passed by the Hon'ble Division Bench of this Court, at para- 8 and 9 as follows:-

"*Para-8:- In the case of Roop Singh Negi Vs Punjab National Bank and another, (2009) 2 SCC 570, the Hon'ble Supreme Court has also examined a similar*

question and held that 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 documents. Reliance, inter alia, was placed by the enquiry officer on the F.I.R. which could not have been treated as evidence.

Para-9:- In the aforesaid reported judgment, the Hon'ble Supreme Court also intervened in the matter. In the present case, it is seen that no witness was examined, only certain documents purported to be a report, prepared by the Chief Engineer, CDO, was produced before the enquiry officer, he accepted the same and passed the final order. The enquiry made by an officer of the department, prior to the initiation of a departmental enquiry is in the nature of a preliminary enquiry. In such cases, a copy of the preliminary enquiry should be handed over to the petitioner and the evidence that led to preparation of the preliminary enquiry and the conclusion arrived thereon, has to be produced before the enquiring officer, who should apply his mind and come to the conclusion, whether such conclusion of the preliminary enquiry report is

*correct or not. While doing so, he should also afford a reasonable opportunity of cross-examining the witnesses, produced before the enquiring officer to prove the charges and also allow him to pass rebuttal evidence. In this case, nothing has been done, thus, there has been a clear violation of the principles of natural justice.***"**

22. The above judgment reported in ***Roop Singh Negi Versus Punjab National Bank and Others*** reported in **(2009) 2 SCC 570** has been followed by the Hon'ble Supreme Court in the case of ***United Bank of India Versus Biswanath Bhattacharjee*** reported in **(2022) 13 SCC 329** and also in ***Delhi Transport Corporation Versus Ashok Kumar Sharma*** reported in **(2024) SCC OnLine SC 1871**.

23. It has been held in ***Delhi Transport Corporation Versus Ashok Kumar Sharma*** reported in **(2024) SCC OnLine SC 1871** at **Paragraph No. 20** as follows:-

> **"Para 20:**- This Court in the case of *Roop Singh Negi Versus Punjab National Bank* categorically held that even in a case of ex parte enquiry, it is essential that the department must lead evidence of witnesses to bring home the charges levelled against the delinquent employee."

24. It transpires that the petitioner after attaining the age of 60 years, superannuated while serving at State Girls high School, Bariatu on

and from 30.06.2017 and petitioner was allowed to retire without any impediment.

25. It transpires that after her superannuation, petitioner was duly paid her retirement dues and her pension was also regularly being paid to her on and from July 2017.

26. It transpires that the petitioner was, thereafter, all of a sudden sent order No. 06/R.V 01-10/2018/ 2975, dated 29.10.2018 (i.e. Annexure-5), issued by Respondent No.2 whereby the petitioner's entire pension has been directed to be stopped with immediate effect under rule 43(a), 43(b) & Rule 139(c) and subsequently with effect from November, 2018 her pension has also been stopped.

27. Further, it transpires that even while passing the impugned Order dated 29.10.2018, no formal order was drawn for converting the Departmental Proceeding into a proceeding under Section 43 (B) of the Jharkhand Pension Rules and as the petitioner has already superannuated on 31.07.2017 and now naturally there is no relationship of Employer and Employee between the Department and the petitioner and hence, it was incumbent upon the Respondent Authorities to convert the Departmental proceedings under Section 43 (B) of the Jharkhand Pension Rules before passing the order of punishment by issuing a formal order and in absence of which the entire proceeding stands vitiated.

28. It has been held in the case of ***State Bank of India & Ors. Versus Navin Kumar Sinha*** reported in **(2024) SCC OnLine SC 3369** at Para **31** and **32** as follows**:-**

> **"*Para 31:-*** *As has been held by this Court on more than one occasion, a subsisting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (I this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service.*
>
> ***Para 32:-*** *Even in the case of C.B. Dhall (supra) relied upon by the appellants, this Court while considering the purport of Rule 20B of the State Bank of India (Supervising Staff) Service Rules, 1975 held that under Rule 20B disciplinary proceeding, if initiated against an employee before he retires from service, could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceeding, the employee is deemed to have continued in service but for no other purpose.***"**

29. It has been held in the case of ***Jagdish Prasad Singh versus State of Bihar and Others*** reported in **(2024) SCC OnLine SC 1909**, at **Para-20,23,24,25** and **26** as follows:-

*"**Para-20:-** Without prejudice to the above findings, we are of the view that no departmental action could have been initiated by the State against the appellant after eight years following his superannuation because the employer employee relationship had come to an end after the appellant's superannuation. The order directing reduction in pay scale and recovery from the appellant was manifestly not preceded by any show cause notice and was thus, passed in gross violation of the principles of natural justice. Pursuant to the order dated 20th July, 2009 passed in the Writ Petition No. 6714 of 2009 filed by the appellant, he submitted a representation to the Secretary, Food and Consumer Protection Department, Government of Bihar, which vide order dated 8th October, 2009 was rejected, preceded by a personal hearing. A perusal of the said order would indicate that the Secretary took a view that as per paragraph 11 (supra) of the Government Resolution, the first/second time bound promotion of the appellant had come to an end automatically w.e.f. on 1st January, 1996 and thus, the appellant was required to be redesignated to the post of Marketing Officer and would be entitled to the revised pay of Rs. 5500-9000 w.e.f. 1st January, 1996 as recommended by the Fitment Committee. Thus, even in this order, the promotion conferred to the appellant to the post of ADSO on 10th March, 1991 is not doubted.*

***Para-23:-** In the case of State of Punjab v. Rafiq Masih (White Washer)3, this Court held as under : -*

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v.) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(emphasis supplied)

Para-24:- *Recently, this Court in Thomas Daniel v. State of Kerala4, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.*

Para-25:- *The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.*

Para-26:- *The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs. 6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.*

30. It further transpires that the impugned order is in the teeth of and absolutely without jurisdiction in terms of Rule 43(b) of the Jharkhand Pension Rules, which provides the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period if the petitioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service and therefore, in view of the fact that in the present case the petitioner have never been found guilty of grave misconduct or to have caused pecuniary loss to Government by misconduct or negligence during his service and therefore, the impugned order passed under the provisions enshrined in Rules 43 (a) and 43 (b) cannot be sustained in the eye of law.

31. It is further evident that in the case of the petitioner, the proceeding under Rule 43(b) of Jharkhand Pension Rules was neither instituted with the sanction of the State Government nor any Notice was issued to the petitioner for initiation of proceeding under Rule 43(b) of Jharkhand Pension Rules.

32. For the sake of convenience, Rule 43 (a), 43 (b) of the Jharkhand Pension Rules is quoted as follows:

*"**Rule 43 (a):-** Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.*

***Rule 43 (b):-** The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the petitioner is found in departmental or judicial proceedings to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:*

Provided that –

(a) Such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) Shall not be instituted save with the sanction of the State Government;

(ii) Shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(iii) Shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made;

(b) Judicial proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a); and

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.

Explanation- For the purposes of the rule-

(a) Departmental proceeding shall be deemed to have been instituted when the charges framed against the petitioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to have been instituted:-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and in the case of

civil proceedings, on the date on which the complaint is presented, or as the case may be, an application is made to civil court."

33. Rule 43 (c) of the Jharkhand Pension (Amendment) Rules, 2018 notified vide notification dated 23.07.2018 reads as follows:

झारखण्ड पेंशन नियमावली–2000 के नियम–43 के अन्तर्गत निम्नलिखित को उप–नियम (ग) के रूप में अंतःस्थापित किया जाता हैः–

''(ग) विभागीय अथवा न्यायिक कार्यवाही, जो किसी सरकारी सेवक अथवा जो अनिवार्य सेवानिवृत्ति की उम्र प्राप्त कर चुके सेवानिवृत सरकारी सेवक पर शुरू है अथवा चलाई जा रही हो, उसके सेवानिवृत्ति तिथि से विभागीय/न्यायिक कार्यवाही के आलोक में आदेश निर्गत होने की तिथि तक, औपबंधिक पेंशन का भुगतान किया जाएगा, जो सेवानिवृत्ति के समय अनुमान्य अधिकतम पेंशन अथवा यदि सरकारी सेवक सेवानिवृत्ति के समय निलंबन पर हो तो निलंबन के पूर्व अनुमान्य अधिकतम पेंशन से अधिक नहीं हो। विभागीय/न्यायिक कार्यवाही के आलोक में अंतिम आदेश निर्गत होने तक उपदान या मृत्यु सह सेवानिवृत्ति उपदान का भुगतान नहीं किया जाएगा।''

34. Further, it is evident and an admitted fact in this case that no Notice was issued to the petitioner for forfeiting 100% pension before passing the impugned order dated 29.10.2018 by the Respondent Authorities and withholding /revising the pension of the petitioner by the impugned order without giving her any Notice to show cause is in contravention of the provisions of Rule 139 (c) of the Jharkhand Pension Rules.

35. As per Rule 139 (c), though The State Government reserve to themselves the power of revising an order relating to pension passed by subordinate authorities under their control only if the service of the pensioner is not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service,

which is not the case in the present matter, however, no such power shall be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension.

36. For the sake of brevity, Rule 139 of the Jharkhand Pension Rules is quoted as follows:

> "*139 (a) The full pension admissible under the rules is not to be given as a matter of course, of unless the service rendered has been really approved.*
>
> *(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.*
>
> *(c) The State Government reserve to themselves the power of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry*

of three years from the date of the order sanctioning the pension was first passed."

37. It is well settled from the judgment passed in ***State of Bihar v. Mohd. Idris Ansari*****,** reported in **1995 Supp (3) SCC 56** that the State Government, in exercise of power under Rule 43(b) of the Jharkhand Pension Rules, may withhold or withdraw the pension or recover if only the pensioner is found in departmental proceeding guilty of grave misconduct or to have committed a misconduct or negligence resulting into pecuniary loss to the Government and further, the State Government, in exercise of power under Rule 139(c) of the Jharkhand Pension Rules, may revise the order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service, however, no such power shall be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension. In the present case, not only the service of the petitioner was not held to be unsatisfactory in the Departmental Proceeding and not only there was also no proof of grave misconduct on the part of the petitioner or any misconduct or negligence resulting into pecuniary loss to the State.

38. It has been held in the case of ***State of Bihar v. Mohd. Idris Ansari*****,** reported in

1995 Supp (3) SCC 56 at **Paragraph No.s 8, 9** and**10** as follows**:-**

> ***"Para 8:-*** *There remains the question whether any assistance can be derived by the appellant authorities from Rule 139 of the Rules. The said Rule 139 reads as under:*
> *"139. (a) The full pension admissible under the rules is not to be given as a matter of course, or unless the service rendered has been really approved.*
> *(b) If the service has not been thoroughly satisfactory, the authority sanctioning the pension should make such reduction in the amount as it thinks proper.*
> *(c) The State Government reserve to themselves the powers of revising an order relating to pension passed by subordinate authorities under their control, if they are satisfied that the service of the pensioner was not thoroughly satisfactory or that there was proof of grave misconduct on his part while in service. No such power shall, however, be exercised without giving the pensioner concerned a reasonable opportunity of showing cause against the action proposed to be taken in regard to his pension, nor any such power shall be exercised after the expiry of three years from the date of the order sanctioning the pension was first passed."*
> ***Para 9:-*** *So far as that rule is concerned, it empowers the State Authorities to decide the question whether full pension should be allowed to a retired government servant or not in the circumstances contemplated by the rule. The first circumstance is that if the service of the government servant concerned is not found to be thoroughly satisfactory, appropriate reduction in the pension can be ordered by the sanctioning authority. The second circumstance is that if it is found that service of the pensioner was not thoroughly satisfactory or there is proof of grave misconduct on the part of the government servant concerned while in service, the State Government in exercise of revisional power may interfere with the fixation of pension by the subordinate authority. But such power flowing from Rule 139, under the aforesaid circumstances, is further hedged by two conditions. First*

condition is that revisional power has to be exercised in consonance with the principles of natural justice and secondly such revisional power can be exercised only within three years from the date of the sanctioning of the pension for the first time. A conjoint reading of Rule 43(b) and Rule 139 projects the following picture:

1. A retired government servant can be proceeded against under Rule 139 and his pension can be appropriately reduced if the sanctioning authority is satisfied that the service record of the respondent was not thoroughly satisfactory.

2. Even if the service record of the officer concerned is found to be thoroughly satisfactory by the sanctioning authority and if the State Government finds that it is not thoroughly satisfactory or that there is proof of grave misconduct of the officer concerned during his service tenure, the State Government can exercise revisional power to reduce the pension but that revision is also subject to the rider that it should be exercised within 3 years from the date, an order sanctioning pension was first passed in his favour by the sanctioning authority and not beyond that period. **"**

39. Even the Patna High Court has decided in ***Kamini Kumari versus The State of Bihar and Others,*** vide order dated **27.02.2024,** passed in ***LPA 1219 of 2023*** **and others,** in favour of the cases of those persons, 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.***)

40. It has been held by the Hon'ble Patna High Court in the case of ***Kamini Kumari***

versus The State of Bihar and Others passed in ***LPA 1219 of 2023*** **and others**, allowed on **27.02.2024,** at **Para-16, 17, 19, 20, 21, 23, 30, 31, 40, 41, 42, 43, 44, 45** and **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.***"**

41. From record it appears that the petitioner was appointed long back, i.e. on 21.01.1985 and the departmental proceeding was initiated against him on 07.09.2010, i.e. after a lapse of almost 25 years, which is contravention of the law laid down by the Hon'ble Supreme Court in ***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.

42. It has been held by the Hon'ble Supreme Court in ***Buddhi Nath Chaudhary v. Abahi Kumar*****,** reported in **(2001) 3 SCC 328,** at **Paragraph 6** as follows:-

> *"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 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."

(Emphasis supplied)

43. It is pertinent to mention here that this Court finds that recovery, if made from the retiral benefits etc. including pension, if already paid to the petitioner, will be iniquitous and harsh in view of ***State of Punjab v. Rafiq Masih*** reported in **(2015) 4 SCC 334.**

44. It has been held by the Hon'ble Supreme Court in the case of ***State of Punjab v. Rafiq Masih*** reported in **(2015) 4 SCC 334** at **Para 18** as follows:

Para 18:- It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(Emphasis supplied)

45. It is pertinent to mention here that the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 9693 of 2013 on 27.05.2020, in the matter of Chairman-cum-Managing Director, Mahanadi Coal Field Limited Vrs. Sri Rabindra Nath Choubey, referred to by the Respondents, is not applicable on the facts and in the circumstances of the present case.

46. It further appears that before passing the impugned order dated 30.10.2018 in the present case the matter was never referred to the Jharkhand Public Service Commission as per proviso (c) of Rule 43 (B) of the

Jharkhand Pension Rules, which requires that the Bihar (Jharkhand) Public Service Commission, shall be consulted before final order of stoppage of pension is passed.

Therefore, the impugned order is illegal and arbitrary as concurrence of the Public Service Commission is a condition precedent, before passing the final order in a disciplinary proceeding after retirement of the Government servant and in the present case Jharkhand Public Service Commission was neither consulted nor its opinion has been sought for which makes the impugned order invalid and non-sustainable in the eye of law.

47. In view of the law laid down by the Hon'ble Supreme Court, Hon'ble High Court of Patna and the Jharkhand High Court and on the facts and in the circumstances mentioned above, impugned Order dated 29.10.2018 (i.e. Annexure-5) issued by the Respondent No. 2 is quashed and set aside. Consequently, the Respondents are directed to release forthwith the pension of the petitioner along with her arrears of pension and all other consequential benefits within a period of Eight (08) weeks from the date of receipt/production of a copy of this order.

48. Thus, this writ petition is allowed with the aforesaid directions and observations indicated above.

(Sanjay Prasad, J.)

Jharkhand High Court, Ranchi
Judgment pronounced on 7th December, 2024
N.A.F.R./s.m.