
(2024) 02 PAT CK 0061

In the Patna High Court

Case No : Letters Patent Appeal No. 1219 Of 2023 In Civil Writ Jurisdiction Case No. 8020 Of 2022, Letters Patent Appeal No. 1249 Of 2023 In Civil Writ Jurisdiction Case No. 20610 Of 2021, Letters Patent Appeal No. 1252 Of 2023 In Civil Writ Jurisdiction Case No. 6

Kamini Kumari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Bihar Pension Rules, 1950 — Rule 43, 43(a), 43(b), 139, 139(c)

Citation : (2024) 02 PAT CK 0061

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Purushottam Kumar Jha, Sarvesh Kr. Singh, Ravi Kumar, Rajat Kumar Tiwary, Abhinav Alok, Arya Achint, Tej Pratap Singh, Sunita Kumari, Raj Nandan Prasad, Vishesh Kr. Singh, P.N. Shahi, Shivam, Deeksha Singh, Amit Anand

Judgement

1. The appeals arise from the common judgment of a learned Single Judge in analogous writ petitions. The petitioners were teachers appointed in the early 1980s whose appointments were subject of an inquiry, conducted by the CBI, on directions of this Court in a Public Interest Litigation (PIL). A report was submitted by the CBI and no action was taken. Again, a PIL was filed which led to further action against the teachers who were alleged to have been appointed illegally; in the CBI report. The various punishments imposed were set aside, in some of the cases, finding the departmental inquiry initiated against each of them to be improper. By reason of the liberty left by this Court to proceed afresh, the Department proceeded de novo against the said teachers. Many of them had retired, against whom, after inquiry, punishment was imposed withdrawing their pension in toto. Those who were in employment at the time of the de novo inquiry were terminated from service. Both these categories of persons along with others who were issued with show-cause notices approached this Court with

a number of writ petitions, all of which were rejected by the judgment impugned in the appeals.

2. The learned Single Judge had at the outset categorized the writ petitions into three; (i) those whose pensions were withdrawn in entirety, having retired from service, (ii) those who were terminated from service and (iii) the teachers who were issued with show-cause notices. The common thread in the proceedings against all the petitioners, some of whom are the appellants herein, was the CBI inquiry. The impugned judgment which relied on the CBI inquiry report; which supported the allegations raised of illegal appointments, to find the penalty imposed to be perfectly in order, especially when the illegal appointments were held to have interfered with and violated the rule of equality, a fundamental right guaranteed under Articles 14 and 16 of the Constitution of India. The appointments were found to be made in collusion, based on extraneous considerations, without proper advertisements, non-compliance of roster points, no transparent selection process having been carried out; all very compelling factors vitiating the very appointments, was the finding. The appointments thus made, by reason of the fraud employed, make such appointments void ab initio according to the writ court.

3. Sri Purushottam Kumar Jha, learned counsel appearing for the appellants would argue that the findings in the impugned judgment are erroneous, misdirected and fail to reckon the principles and procedures which validate a proper departmental inquiry. The mere reliance on the CBI report which was kept in the back-burner for a number of years and which did not lead to registration of any FIRs was completely wrong. The inquiry initiated, after retirement did not follow the rules of procedure and hence the very initiation was flawed. After retirement there is no employer employee relationship subsisting. There was absolutely no evidence led at the inquiry and even the report was not marked in the inquiry as a document.

4. The CBI report having not been marked in the inquiry, the reliance placed by the learned Single Judge on the submissions made before Court on behalf of the CBI, by their Counsel was not in order. None of the legal contentions raised against the inquiry conducted and the punishment imposed were looked into by the learned Single Judge. Comparing the above case to other cases, where illegal appointments were made, to which interference was caused by this Court, affirmed by the Hon'ble Supreme Court; was irregular since the facts were different and distinct. The allegations in the inquiry report are demonstrated, by the documents on record, to be false. The appellants are entitled to seek for resumption of their pension with arrears paid and those who were terminated, to be reinstated with all attendant benefits. The learned counsel meticulously took us through the various documents produced in the records, in the individual cases.

5. Learned AAG-13, Sarvesh Kumar Singh, on the other hand sought to uphold the judgment impugned, which sustained the various penalties imposed. A

proper departmental proceeding was conducted, in which there was no violation of principles of natural justice. The appointments interfered with, were found to have been carried out without proper advertisement in the local newspapers and without a transparent selection process. There was also no roster clearance obtained, all of which makes the subject appointments backdoor entries; void ab initio for not having conformed with Articles 14 and 16 of the Constitution of India. *State of Karnataka v. Umadevi* (3) reported in (2006) 4 SCC 1 was specifically relied on along with various other decisions of this Court and the Supreme Court to sustain the penalties imposed.

6. The controversy arose by reason of a CBI investigation ordered by this Court. Though the same did not result in any criminal case being instituted, the department proceeded with the domestic enquiries leading to the punishments imposed. It is trite that criminal prosecution and departmental inquiry are parallel proceedings and often cannot be mixed up. Proof beyond reasonable doubt is mandatory in a criminal prosecution, while departmental proceedings require only a preponderance of probabilities. The preponderance of probabilities leans in favour of the allegation of illegal appointments which resulted in the penalties imposed. Principles of natural justice cannot be put into a straitjacket formula and the learned Single Judge has found that the facts coming out from the inquiry is undisputed and the entire proceedings validates the commitment of the State Government to act against corruption, nepotism and ensure that there is no frustration of the equality clause. The impugned judgment has to be sustained, concludes the learned AAG.

7. We do not intend to go merely on the basis of the different categories of cases as placed before us. After hearing the parties and after looking at the documents, we are convinced that each of the cases have to be taken up separately and the facts studied. The contention regarding a proper departmental inquiry not having been carried out and the validity of an inquiry after retirement, are all common grounds which have to be looked into, on the basis of the binding precedents.

8. Before that, we notice that it was in the year 1998 that in CWJC No. 9847 of 1998 (*Brajesh Kumar Singh and Others vs. State of Bihar and Others*), by an order dated 16.12.2019, there was a direction to the CBI to carry out investigation in the matter of appointments/promotion of Assistant Teachers in the Lower Subordinate Education Service (for brevity 'LSES') (women wing) who were appointed between 1980 to 1988. The CBI submitted its report on 09.11.2004 before the Chief Secretary, State of Bihar.

9. In the report, out of 305 teachers, only 27 were found to be regularly appointed. Recommendation was made for taking action against the illegally appointed teachers and also against those officers who made such appointments. According to the CBI, the appointments were made without advertisements, without roster clearance and without following the reservation rules. There was also allegation of over age and lack of required mandatory qualification raised

against certain individuals. The CBI did not register any FIR to put the criminal law into motion and the State slept over the matter.

10. Only in the year 2016 when CWJC No. 10022 of 2016 was filed the State woke up to the alleged illegality said to have been committed by its own officers. In the writ petition the Principal Secretary and the other officers of the Department of Education were called upon to appear in person to put forth, the action taken by the State on the report of the CBI. Based on the orders issued in the Public Interest Litigation, show-cause notices were issued and punishment imposed of termination, in some of the cases.

11. A batch of writ petitions were filed and disposed of on 17.01.2017 in Shanti Kumari vs. State of Bihar & Ors., CWJC No. 17904 of 2016. The petitioners, some of whom are also the appellants in the instant appeals, were found to be deprived of a reasonable opportunity to canvas their respective cases, produce relevant documents together with supporting case laws. It was categorically stated that the observations against the inquiry would not be a shield against further proceedings when the appointments were said to have been plagued by fraud. The said liberty left to the department resulted in the present proceedings and the various penalties imposed.

12. Now we look at the individual facts. The appellant in LPA No. 1219 of 2023 retired from the Bihar Education Service after long service, commencing from the appointment to the Lower Subordinate Education Service Cadre ('LSES Cadre' for short) as an Assistant Teacher on 01.08.1981. She retired as a District Program Officer (Accounts and Planning) from the Bihar Education Service, Class-II, on 31.01.2016. The memorandum of charges was framed on 13.10.2016 after her retirement, for the alleged illegal appointment which took place in 1981.

13. The appellant in LPA No. 1252 of 2023 was appointed as an Assistant Teacher in the LSES cadre on 07.06.1988 and she retired from the same post on 30.11.2014. The memorandum of charge came to be framed against her on 24.11.2021, after her retirement, for the incident which took place in 1988.

14. There are two appellants in LPA No. 1254 of 2023, the first of whom was appointed as Assistant Teacher in LSES cadre on 29.02.1988 and retired from the said post on 31.05.2017. After retirement, a memorandum of charge came to be framed against the petitioner on 27.10.2018 for the incident that took place in 1988. The second appellant, Vimla Kumari also was appointed as Assistant Teacher, in the LSES cadre on 14.09.1981 and retired on 31.12.2017. She was also issued with a memorandum of charges after her retirement on 27.10.2018 for the incident which took place in the year 1981; ie: her initial appointment. The above three writ petitions with respect to four appointees in the present batch of cases, project & bring forth a conspectus of the proceedings initiated against the retired teachers.

15. The three appeals are noticed first since in the first two appeals, the proceedings were first initiated after retirement and in the last, though initiated

while in service, the punishment imposed was set aside by this Court and the de novo proceedings were commenced after retirement. These appeals are representative of the batch of appeals.

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.

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.

18. In understanding the contention with respect to Section 43(b), we have to look into the facts a little more, in detail. We will look at the writ petitions again to better understand the appointments and the progression of service of the respective petitioners. C.W.J.C. No.8020 of 2022 gave rise to L.P.A. No. 1219 of 2023. It is seen from the records of the writ petition that Bihar Education Manual, 1961 by clause 97(xi) (Annexure-1) empowered the District Inspector of Schools (for brevity 'D.I') to appoint teachers in the scale of Rs.50-90 or below, in the schools under the D.I's Control and to sanction pension to all such cases. The scales of pay definitely would have undergone a change by the time the petitioners herein were appointed in the early 1980s. The power of D.I of Schools to appoint teachers was reiterated in Memo No.1441 dated 03.11.1979, as seen from Annexure-2, issued just prior to the subject appointments. Annexure-4 is said to be the advertisement brought out by the D.I of Schools in Madhubani dated 01.08.1981. The petitioner, who was registered with the employment exchange, as is revealed from Annexure-3 was appointed by Annexure-5 order dated 20.10.1981 and she joined on 05.11.1981.

19. The appointment by Annexure-5 was confirmed by the Inspector 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.

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.

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.

22. There is one additional contention raised on Rule 139(c) for which we need to notice the said rule, which is extracted hereunder.

R139. (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."

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:-

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.

24. Now, we come to Rule 139 of the Bihar Pension Rules, which also has been interpreted in Md. Idris Ansari (supra); paragraph 9 and 10 from the cited decision is extracted hereunder: -

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.

10. So far as the second type of cases are concerned the proof of grave misconduct on the part of the government servant concerned during his service tenure will have to be culled out by the revisional authority from the departmental proceedings or judicial proceedings which might have taken place during his service tenure or from departmental proceedings which may be initiated even after his retirement in such type of cases. But such departmental proceedings will have to comply with the requirements of Rule 43(b). Consequently, a retired government servant can be found guilty of grave misconduct during his service career pursuant to the departmental proceedings conducted against him even after his retirement, but such proceedings could be initiated in connection with only such misconduct which might have taken place within 4 years of the initiation of such departmental proceedings against him. In the present case, the respondent retired on 31-1-1993 and the show-cause notice was issued on the ground of grave misconduct on 27-9-1993 and not on the ground that service record of the pensioner was not thoroughly satisfactory. It was issued by the State Government as sanctioning authority. It had,

therefore, to be read with Rule 43(b). Such notice therefore, could cover any misconduct if committed within 4 years prior to 27-9-1993 meaning thereby it should have been committed during the period from 26-9-1989 up to 31-1-1993 when the respondent retired. Only in case of such a misconduct, departmental proceedings could have been initiated against the respondent under Rule 43(b). In such proceedings, if he was found guilty of misconduct he could have been properly proceeded against under Rule 139(a) and (b). On the facts of the present case it must be held, agreeing with the High Court that the notice dated 27-9-1993 invoking powers under Rule 139(a) and (b) was issued wholly on the ground of alleged past misconduct and was not based on the ground that service record of the respondent was not thoroughly satisfactory. So far as that ground was concerned, on a conjoint reading of Rule 43(b) and Rule 139(a) there is no escape from the conclusion that as the alleged misconduct was committed by the respondent prior to 4 years from the date on which the show-cause notice dated 27-9-1993 was issued, the appellant authority had no power to invoke Rule 139(a) and (b) against the respondent on the ground of proved misconduct. Consequently, it had to be held that proceedings under Rule 139 were wholly incompetent. The High Court was equally justified in quashing the final order dated 13-12-1993 as there is no proof of such a misconduct. No question of remanding the proceedings under Rule 139(a) and (b) would survive as the alleged grave misconduct could not be established in any departmental proceedings after the expiry of four years from 1986-87, as such proceedings would be clearly barred by Rule 43(b) proviso (a)(ii). Consequently, the show-cause notice dated 27-9-1993 will have to be treated as stillborn and ineffective from its inception. Such a notice cannot be resorted to for supporting any fresh proceedings by way of remand. For all these reasons no case is made for our interference in this appeal. In the result appeal fails and is dismissed. There is no order as to costs.

25. We have to notice that there are two situations provided under Rule 139 as per clause (b) and clause (c), where there can be a reduction of pension. Clause (b) comes into play when the service is found to be thoroughly unsatisfactory. No such finding has been entered into any of the cases before us. Clause (c) relates to the power of revising an order of pension by the State Government, on the order being passed of any sub-ordinate authority. Therein also, there should be satisfaction, either that the pensioners service was not thoroughly satisfactory or that there was proof of grave misconduct on his part, while in service. There is no allegation of unsatisfactory service raised against any of the appellants, we recall. There is also no allegation of misconduct and what is alleged is an appointment having been obtained irregularly, which relates back to more than three decades. The disciplinary inquiry initiated itself is illegal for want of sanction and the incident complained of being far earlier to that provided under Rule 43(b); thus the initiation itself stands vitiated. The punishment imposed under Section 139(c) is also not sustainable, going by the Pension Rules. We have to set aside both the impugned orders in C.W.J.C. No.8020 of 2022.

26. Now, we come to C.W.J.C. No.693 of 2022 which gave rise to L.P.A. No.1252 of 2023. Therein, the petitioner was appointed on 07.06.1988 for three months by the District Schools Inspectoress under Rule 97(xi) of the Bihar Education Manual and on 14.10.1988, the School Inspectoress-cum-Deputy Director of Education granted extension and she continued till her retirement.

27. Annexure-A2 and A3, are the impugned orders of financial progression and Annexure-A4 evidences her retirement on 30.11.2014, further evidenced by the Pension Payment Order (for brevity 'PPO')-(Annexure-5) issued on 25.06.2015. Six and a half years later, a second show-cause notice dated 15.06.2021 was issued and a reply was promptly filed by the petitioner as Annexure-A6 dated 28.06.2021. The memo dated 24.11.2021 initiating the departmental proceeding, the memorandum of charges of even date and the CBI report are produced in the writ petition as Annexures-11 to 13 respectively.

28. The disciplinary authority has issued Annexure-C, produced in the State's Counter affidavit, withholding the pension of the petitioner, which is the order of punishment challenged by the appellant; producing the same as Annexure-P1 dated 11.05.22 in I.A. No.01 of 2023 in the writ appeal. The second show-cause notice dated 08.04.2022 and the petitioner's representation are also produced in I.A. No.01 of 2023 as Annexure-P2 and P3. The illegality found in the initiation of proceedings and the order passed, as found by us with respect to the appeal already discussed, applies herein squarely. The proceedings are found to be illegally initiated and the order passed is also liable to be set aside and we do so.

29. C.W.J.C. No.439 of 2022 has been filed by three retired teachers from the rejection of which, L.P.A. No.1254 of 2023 is filed by two of them. The initial appointment of the petitioners 1 and 2 were respectively on 29.02.1988 and 14.09.1981. Earlier, departmental proceeding was initiated against the petitioners and their services terminated vide Annexure-10 and 11 orders, which was challenged in C.W.J.C. No.1576 of 2017, wherein final order was passed on 21.02.2017 where the termination of the petitioner's came to be set aside vide Annexure-12. Liberty was reserved to proceed against the petitioners but no proceeding was initiated before their retirement respectively on 31.05.2017 and 31.12.2017.

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.

32. CWJC No. 2364 of 2023, was rejected from which arises LPA No. 1257 of 2023. The petitioner was appointed as a Music Teacher pursuant to the advertisement produced at Annexure-2. Annexure-2, provided for the maximum age of 30 years as on 01.04.1988. The petitioner's date of birth as revealed from the matriculation certificate produced as Annexure-1 is 30.08.1959, and she had not attained the maximum age, as prescribed in the advertisement. The petitioner was appointed as per Annexure-4 and she was also transferred as per Annexures-5 and 6. The petitioner's financial progressions, in the post she was appointed, are indicated at Annexures-7 and 8.

33. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, issued Annexure-9 i.e. show cause notice dated 22.08.2016, enclosing the CBI report at Annexure-10; which was a second show cause notice without any issuance of memorandum of charges. The petitioner submitted her explanation as per Annexure-11, which was ignored and by Annexure-12 order she was terminated.

34. The petitioner, along with others who were terminated approached this Court in CWJC No. 15713 of 2016 (Prema Kumari & Anr Vs. The State of Bihar and Ors) which was allowed, with liberty left to proceed in accordance with law (Annexure-13). The judgment of the learned Single Judge, was also affirmed by a Division Bench as per Annexure-14. By Annexure-15 dated 20.02.2017 the petitioner was reinstated in service. Annexure-16 also granted benefits of continuity of service to the petitioner and other similarly situated teachers. While she was so continuing in employment, memo of charges (Annexure-17) dated 18.01.2018 was issued again against her. The inquiry was concluded exonerating her of the charges by Annexure 22 dated 22.02.2019. She retired on 30.08.2019 and the PPO issued to her is marked as Annexure 24.

35. Again an inquiry was conducted by the 5th respondent, without any information to the petitioner and inquiry report dated 26.07.2021 (Annexure-25) was submitted. The allegation against the petitioner was that, she was overaged, when she was appointed, which was said to be proved in the departmental inquiry initiated against her, relying merely on the CBI's report. The disciplinary authority imposed the punishment of withholding of 100 per cent pension under Rule 43(b) of the Bihar Pension Rules, 1950, impugned as Annexure-33 in the

writ petition.

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.

49. Ordered accordingly.