

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13994 of 2021

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Lalita Devi Wife of Narottam Kumar Gupta Resident of Village- Parham, Post- Farda, Police Station- Naya Ramnagar, District- Munger at presently Posted as Block Teacher in Middle School, Parham, P.S.- Naya Ramnagar, District- Munger.

... ... Petitioner/s

Versus

1. The Union of India, through the Secretary Human Resources Department, Government of India, New Delhi.
2. The Secretary Human Resources Department, Government of India, New Delhi.
3. Indira Gandhi National Open University Through its Regional Director, Institutional Area, Mithapur, Patna.
4. Regional Director Indira Gandhi National Open University, Institutional Area, Mithapur, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Kumar Verma, Advocate
For the Respondent/s : Mr. Kundan Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 08-05-2025

Heard Mr. Ashutosh Kumar Verma, learned counsel appearing on behalf of the petitioner and Mr. Kundan Kumar Singh, learned counsel for the respondent/s.

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

"(I) To issue an appropriate writ /order /direction in nature of mandamus, directing



the Respondents to allow the petitioner appear in the supplementary examination of Diploma in Primary Education (DPE) or petitioner should be passed on the basis of average marking.

(II) To any other relief for which the petitioner appear to found entitled by your lordships deem fit and proper."

3. The petitioner was appointed as a Block Teacher in the year 2005 at Primary School Parham, Block- Jamalpur, District- Munger vide Memo No. 348 dated 24.06.2005 and she joined the school on 06.07.2005. The said Primary School was later upgraded as Utkramit Middle School, Parham. After completion of two years of service, the Headmaster of the said school issued a letter dated 31.05.2008 and directed the petitioner to attend the programme of Diploma in Primary Education (DPC) conducted by Indira Gandhi National Open University (hereinafter referred to as the "IGNOU"). The petitioner took admission in the said programme in July, 2008 and her Enrollment No. was 086362185. The petitioner had participated in six days workshop under the said programme conducted by IGNOU and a certificate was awarded in favour of the petitioner. The petitioner completed Diploma in Primary Education Progamme but she could not appear in theory ES-221, ES-222 and practical-1 exam as she was undergoing treatment at Mental Hospital from 08.04.2010 till 31.12.2018



and, as such, the result of two paper could not be completed. The authority also not allowed the petitioner to join the school after his recovery from mental illness. Thereafter, the petitioner had preferred appeal on 05.03.2019 before the District Appellate Authority being Appeal No. 47 of 2019, which was allowed *vide* order dated 26.09.2019 and the petitioner was allowed to join the duty in the concerned school.

4. Considering the relief as prayed for in paragraph no.1 of the present writ petition, I find that the petitioner had undergone mental treatment and being mentally handicapped, he is required to be treated as per the provisions of the Rights of Persons with Disability Act (RPwD Act). In respect of a mentally disabled persons in case of ***Rabindra Nath Shukla vs. Uttar Bihar Gramin Bank & Ors. (CWJC No. 18853 of 2012)***, where the petitioner had faced disciplinary action, I had occasion to discuss the similar fact and I find that the observations made in paragraphs no. 13, 14, 16, 18 and 19, of the aforesaid case, find relevance with the fact of the present case, which *inter alia* are reproduced hereinafter:

*"13. The Apex Court in case of **Ravinder Kumar Dhariwal and another Versus Union of India and Others**, reported in (2023) 2 Supreme Court Cases 209, faced with the similar situation, where a person suffering from mental disability was subjected to the disciplinary proceeding, has held that the proceedings are discriminatory and violative of principle of the Rights of Persons with Disability Act (hereinafter referred to as the*



“RPwD Act”). The Apex Court has held as follows in paragraph nos.148.2 and 149 of the **Ravinder Kumar Dhariwal (Supra)**.

148.2. The mental disability of a person need not be the sole cause of the misconduct that led to the initiation of the disciplinary proceeding. Any residual control that persons with mental disabilities have over their conduct merely diminishes the extent to which the disability contributed to the conduct. The mental disability impairs the ability of persons to comply with workplace standards in comparison to their able-bodied counterparts. Such persons suffer a disproportionate disadvantage due to the impairment and are more likely to be subjected to disciplinary proceedings. Thus, the initiation of disciplinary proceedings against persons with mental disabilities is a facet of indirect discrimination.

149. The disciplinary proceedings against the appellant relating to the first enquiry are set aside. The appellant is also entitled to the protection of Section 20(4) of the RPwD Act in the event he is found unsuitable for his current employment duty. While re-assigning the appellant to an alternate post, should it become necessary, his pay, emoluments and conditions of service must be protected. The authorities will be at liberty to ensure that the assignment to an alternate post does not involve the use of or control over firearms or equipment which may pose a danger to the appellant or others in or around the workplace.”

14. The Hon'ble Supreme Court has set aside the order of penalty. The facts of the present case are also similar as of **Ravinder Kumar Dhariwal (Supra)** to the extent that the petitioner was served with first charge memo in the year 1997 and the case of the petitioner without considering the provision of Section 47 of the Rights of Persons with Disability Act, being a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine of generalia specialibus non derogant would apply, hence, the service conditions Rules cannot override Section 47 of the Act. Further Section 72 of the Act also supports the case of the petitioner. The said clarification has been laid down by the Apex Court in case of **Kunal Singh Versus Union of India and Another**, reported in (2003) 4 Supreme Court Cases, 524 and in this regard paragraph no.11 of the said judgment is reproduced hereinafter:-

“11. We have to notice one more aspect in relation to the appellant getting invalidity pension as per Rule 38 of the CCS Pension Rules. The Act is a special legislation dealing with persons with disabilities to provide equal opportunities, protection of rights and full participation to them. It being a special enactment, doctrine



of generalia specialibus non derogant would apply. Hence Rule 38 of the Central Civil Services (Pension) Rules cannot override Section 47 of the Act. Further, Section 72 of the Act also supports the case of the appellant, which reads:

"72. Act to be in addition to and not in derogation of any other law.—The provisions of this Act, or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefit of persons with disabilities."

16. The Apex Court in the case of **Ravinder Kumar Dhariwal (Supra)** has discussed the changing legal resume and continuing quest for justice in paragraphs no.18 to 32. While discussing with the facts of the said case in paragraph no.22, the Apex Court has observed that Section 47 states that no employee working in a government establishment, who acquires a disability during the course of service shall be (i) terminated from employment; (ii) reduced in rank; or (iii) denied promotion. Section 47 protects disabled employees from punitive actions on the ground of disability. The Apex Court also clarifies that the general rule of interpretation is that a newly enacted statute has prospective application. Section 6 of General Clauses Act provides an exception to this Rule, where a pending legal proceeding or investigation would be guided by the old enactment, if any, right, privilege, obligation or liability' has accrued to the parties under the repealed law. Exampling the said situation, as of in the present case, the Apex Court has relied upon the law laid down in the case of **M/S. Ambalal Sarabhai Enterprises Ltd. Vs. M/S. Amrit Lal & Co. & Anr**, reported in (2001) 8 SCC 397. The observation made in paragraphs no. 23 to 24 of **Ravinder Kumar Dhariwal (Supra)** would be relevant in this regard, which are reproduced hereinafter:-

"23. In Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co. [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397] , the issue before a two-Judge Bench of this Court was whether the Court of Rent Controller constituted under the Delhi Rent Control Act, 1958, or the ordinary civil court would have the jurisdiction to decide the eviction proceedings instituted by the landlord against the tenant. Section 3 was amended to exclude tenancies whose monthly income exceeded Rs 3500 from the application of the Delhi Rent Control Act. In that case, the monthly rent was Rs 8625. The eviction petition was filed by the landlord in 1985 before the amendment of Section 3. While the petition was pending, Section 3 was amended, which excluded such tenancies from the purview of the Act. The High Court had held that in view of the amendment, only the ordinary civil court and not the Rent Controller would have jurisdiction over the eviction



proceedings. The tenant contended that since the tenant did not possess any vested right under the Act before the amendment came into force, the Rent Controller would not have jurisdiction. The landlord contended that even if the tenant did not possess any vested right, the landlord possessed a vested right, and that in view of Section 6 of GCA, the pending proceedings should continue under the pre-amended Rent Control Act. This Court held that the tenant did not have any vested right under the Act. Furthermore, the Court also held that the landlord does not have an accrued "right" under Section 14 of the Delhi Rent Control Act. Section 14 of the Delhi Rent Control Act provides a general protective right to the tenant against eviction. The proviso to Section 14 lists specific grounds on which the tenant could be evicted.

24. The Court held that since Section 14 is a protective right conferred upon the tenant, it cannot be construed to provide a right to the landlord. In this context, it was observed : (Ambalal Sarabhai Enterprises case [Ambalal Sarabhai Enterprises Ltd. v. Amrit Lal & Co., (2001) 8 SCC 397], SCC p. 409, para 22)

"22. ... The right which is sought to be inferred as vested right is only under its proviso. Proviso cannot enlarge the main section. When the main section is only a protective right of a tenant, various clauses of its proviso cannot be construed as it gives a vested right to a landlord. The right, if at all could be said of the landlord, flows only under the protective tenant's umbrella which cannot be enlarged into a vested right of a landlord."

However, it was observed that Section 14 provides a "privilege" to the landlord, and if the privilege has been accrued or acquired as required under Section 6 of GCA, then the Rent Controller would retain the jurisdiction to decide the proceedings. It was held that on the filing of the eviction petition, the privilege accrued to the landlord in view of Section 6(c) of the GCA, and the pending proceeding was saved.

18. The Apex Court dealing with the provisions of Section 2(h) of the RPwD Act, which defines discrimination, has held as follows in paragraph no.56 of the **Ravinder Kumar Dhariwal (Supra)**:

"56. Section 3 of the RPwD Act states that persons with disabilities must not be discriminated against on the ground of disability, and the appropriate Government shall ensure that persons with disability enjoy the right to live with dignity. Section 2(h) of the RPwD Act defines "discrimination" as follows:

"2. (h) "discrimination" in relation to disability, means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and



fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation;"

*19. Mental disability and discrimination has been dealt in paragraph no. 59 of the said judgment. It has been observed by the Apex Court in the said judgment that to escape stigma and discrimination, persons with mental health issues painstakingly attempt to hide their illnesses from co-workers and managers. Disclosure of mental health status carries with it the possibility of being demoted, laid off, or being harassed by co-workers. Resultantly, persons with mental health disorders deprive themselves of workplace assistance and effective treatments that can improve their mental health. The Apex Court had proceeded to discuss the stigmatization of mental health disorder and societal discrimination in paragraph no.81 and India being signatory to CRPD, which is an International Human Right Treaty of United Nation, intends to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all persons with disabilities. Taking note of the provisions of CRPD in paragraph no.84 to 90, the Apex Court has finally concluded in paragraph no.91 that discourse needs to expand to fundamental issues of housing, education, support, and employment. The present case is one such opportunity. To conclude that disciplinary proceeding can constitute discrimination against person disability, Section 47 comes into play in relation to right of a person with mental disability against employment discrimination. The Apex Court in the said judgment after discussing at length the Act of different countries has finally made analysis that Article 15 of the Constitution of India states that State shall not discriminate against any citizen on grounds only of religion, race, castes, sex, place of birth or any of them and indirect discrimination, as has been recognized by in the case of **Nitisha Vs. Union of India (2021) 15 SCC 125**, in which case, the conception of substantive equality that prevents the international and Indian disability right regime held that disciplinary proceeding against the appellant of the said case to be discriminatory and must be set aside."*

5. Law is well settled that a person with disability cannot be treated along with the normal persons and as such, this Court has no option than to direct the IGNOU to allow the petitioner to complete her course, keeping in mind the



observation made in the order dated 26.09.2019 by the District Appellate Authority in Appeal Case No. 47 of 2019, so that the petitioner may not suffer in any manner considering the fact that she was undergoing mental treatment from 08.04.2010 till 31.12.2018 and, as such, the petitioner could not appear in theory ES-221, ES-222 and practical-1.

6. Once the petitioner completes her course, the respondent State must not deny her to continue with his work.

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

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	13.05.2025
Transmission Date	N/A

