

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.77 of 2015

IN

Civil Writ Jurisdiction Case No. 3491 of 2013

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Md. Manzoor Ahmad, S/o. late Islamuddin, R/o. village- Bari Borna, P.O. Borna,
Via Gogri, P.S. Gogri, District- Khagaria.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. The Director (Primary Education) Human Resources Development, Government of Bihar, Patna.
3. The District Magistrate, Khagaria, District- Khagaria.
4. The District Education Officer, Khagaria.
5. The District Programme Officer (Education), Khagaria.
6. The Block Education Officer, Gogri Block, District- Khagaria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar, Advocate.

For the Respondent/s : Mr. Anil Kumar, GP-23.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 28-01-2015

Heard Mr. Sarva Deo Singh, learned Counsel appearing on behalf of the appellant, as well as Mr. Kaushal Kishore, learned Assistant Counsel to Government Pleader No.23, representing the State of Bihar and its officials.

2. The appellant, in the present appeal, under Clause 10 of the Letters Patent of this High Court, is aggrieved by the order, dated 05.05.2014, passed by learned single Judge in CWJC No. 3491 of 2013, whereby the writ application, filed by the appellant, under Article 226 of the Constitution of India, has

been rejected on the ground that his claim before the writ Court was belated one.

3. Certain facts, relevant for adjudication of the present appeal, are not in dispute. As per the appellant himself, he was appointed by the Secretary of the Managing Committee, Urdu Primary School, Khagaria, on 09.12.1983, whereafter he joined on 01.01.1984. Bihar Non-Government Elementary School (Take Over Control) Act, 1976; which came into operation with effect from 06.02.1976.

Rule 3(4) of the Act reads as under:

"4(a)With regard to the taking over of Elementary schools other than those mentioned in sub-sections (1) and (3) there shall be a District Committee in each District which shall examine the feasibility of taking over of such schools by the State Government and which shall consist of the following members:

- (i) Deputy Development Commissioner/ Administrator, District Board- Chairman.*
- (ii) District Superintendent of Education-Secretary.*

Members

- (iii) District Education Officer,*
- (iv) District Inspector of schools,*
- (v) Sub-divisional Education Officer of the concerned subdivision, and*
- (vi) Deputy Inspector of schools concerned.*
- (b). The State Government may, from time to time make changes in the personnel of the District committees so constituted."*

4. Section 4 of the Act deals with the consequence of taking over. Sub-section (2) of Section 4, being relevant in this regard, is being quoted hereinbelow:

"Every officer, teacher or other employee holding any office or posts in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government."

5. Learned single Judge has noted in the order, under appeal, that the appellant failed to bring on record any document to demonstrate that the school was, in fact, taken over under the said 1976 Act. For this reason and also for the reason that the appellant did not raise any grievance for his absorption by operation of Section 4(2) of the Act, before appropriate forum and within reasonable time, learned single Judge dismissed the writ application.

6. Mr. Sarva Deo Singh, learned Counsel, appearing on behalf of the appellant, has submitted, with his usual



vehemence, that the appellant had been continuously approaching the authorities for his absorption by virtue of Section 4(2) of the 1976 Act. Despite several representations, the authorities did not respond nor did they reject the petitioners claim and this compelled the appellant to prefer the writ application in 2013. We are satisfied that the appellant has not been able to explain the delay in approaching this Court in 2013.

7. The Supreme Court has repeatedly observed that belated claims, under Article 226 of the Constitution of India, cannot be entertained unless tangible explanation is tendered. Reference may be made to the decision of Apex Court in case of **Naresh Kumar V. Department of Atomic Energy, reported in (2010) 7 SCC 525.**

8. In case of **C. Jacob V. Director of Geology and Mines**, reported in **(2008) 10 SCC 115**, the Supreme Court did not approve the *modus operandi* of filing repeated representation as a ground for entertaining a belated claim in a proceeding under Article 226 of the Constitution of India. Reference, in this regard, may also be made to the decision of Apex Court in case of **S.S Balu V. State of Kerala**, reported in **(2009) 2 SCC 479.**

9. We do not find force in the explanation put forth on behalf of the appellant in approaching this Court after so

much of delay. We do not notice any infirmity in the order of the learned single Judge and find, therefore, no merit in this appeal.

10. This appeal is accordingly dismissed.

(I. A. Ansari, J.)

(Chakradhari Sharan Singh, J.)

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