

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1054 of 2012
IN
Civil Writ Jurisdiction Case No. 11501 of 2004
With
Interlocutory Application No.4690 of 2012
And
Interlocutory Application No.4691 of 2012
In
Letters Patent Appeal No.1054 of 2012

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1. The State of Bihar through the Secretary, Department of Primary Education, Government of Bihar, New Secretariat Building, Patna-800015.
 2. The Director, Primary Education, Bihar, Patna having its office at New Secretariat Building, Patna-800015.
 3. The Assistant Director (Primary Education), Bihar, having its office at New Secretariat Building, Patna-800015.
 4. The District Superintendent of Education, Kaimur, Bhabhua.

.... Respondents-Appellants

Versus

1. Lakshmi Devi, wife of Shri Vishwanath Choubey, resident of Village- Khenethi Gurudas, Police Station- Sonhan, District- Kaimur.

Writ petitioner-Respondent

2. The Accountant General, Bihar, Birchand Patel Marg, 'R' Block, Patna.

.... Respondent-Respondent

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Appearance :

For the Appellants : Mr. Sanjay Prakash Verma, Advocate

For the Respondent No.1 : Mr. Ambuj Nayan Choubey, Advocate

For the Respondent No.2 : Mr. L.P.K. Rajgariar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-01-2015

This Letters Patent Appeal is preferred against the order dated 03.03.2010 passed by the learned Single Judge in CWJC No.11501 of 2004.

The respondents in the writ petition are the

appellants.

Briefly stated the facts are as under:

The sole respondent herein was appointed as a teacher in Primary School, Govt. of Bihar on 26.03.1962. She passed the Prathama Examination from Hindi Sahitya Sammelan, Prayag on 20.04.1971. Thereafter, she acquired the Matriculation qualification from the State of Bihar on 12.06.1976.

The relevant Rules provide for up-gradation of a teacher on acquisition of Matriculation qualification. The competent authority passed order dated 12.06.1986 extending the benefit of up-gradation to the respondent, with effect from 12.06.1976, i.e. the date on which she passed the Matriculation examination, conducted by the State of Bihar.

Thereafter, another order was passed on 15.10.1992 by the District Superintendent of Education to the effect that the respondent is entitled for up-gradation with effect from 20th April, 1971, the date on which she passed Prathama Examination from Hindi Sahitya Sammelan, Prayag. The same was also implemented.

The respondent retired on attaining the age of superannuation, on 28th February, 2001. Her pension papers were submitted to the office of the Accountant General. An objection was raised by the office of the Accountant General



through proceedings dated 21.11.2002 stating that the respondent passed Matriculation examination in the year 1976 and that there was no basis to extend the benefit to her with effect from 20th April, 1971. Taking this into account, the appellants passed an order dated 12.03.2004 to the effect that the respondent is entitled to be extended the benefit of pay scale of Matric trained teacher, only from 12.06.1976. Accordingly, her pension was fixed and proceedings were initiated for recovery of the excess amount paid to her, while she was in service; and the same was recovered. Feeling aggrieved by that, the respondent filed the writ petition. Several grounds, including the one of non-issuance of notice, were urged.

The appellants opposed the writ petition, by filing a counter affidavit. According to them, the respondent was not entitled to be extended the benefit of pay scale of Matric trained teacher with effect from 20th April, 1971. It was also pleaded that being aware that Prathama Examination from Hindi Sahitya Sammelan, Prayag, was not equivalent to Matriculation, the respondent herself passed the Matriculation examination from the State of Bihar in 1976. Certain other grounds were also pleaded.

The learned Single Judge allowed the writ petition mostly on the ground that the appellants themselves

took nearly 20 years to decide the matter and there is no basis for them to deny the respondent, the benefit of the pay scale of Matric trained teacher with effect from 20th April, 1971. Hence, this Letters Patent Appeal.

Heard Sri Sanjay Prakash Verma, learned counsel for the appellants, Sri Ambuj Nayan Choubey, learned counsel for the respondent no.1, and Sri L.P.K. Rajgariar, learned counsel for the respondent no.2

The entire controversy is as to when the respondent became entitled to be extended the benefit of pay scale of Matric trained teacher.

It is, no doubt, true that she passed the Prathama Examination from Hindi Sahitya Sammelan, Prayag, on 20th April, 1971. However, no benefit was extended on the basis of that. It is only after she passed the Matriculation examination conducted by the State of Bihar on 12.06.1976, that benefit was extended, though with a delay of 10 years, through proceedings dated 12.6.1986. However, six years thereafter, the District Superintendent of Examination took the view that the respondent was entitled to the benefit of pay scale of Matric trained teacher with effect from 20th April, 1971, obviously on the basis of the Prathama Examination from Hindi Sahitya Sammelan, Prayag. No controversy in that behalf, arose till the respondent retired on



attaining the age of superannuation. The objection raised by the office of the Accountant General, that sparked the controversy. The appellants verified the matter and came to the conclusion that the respondent was entitled to be extended the benefit of pay scale of Matric trained teacher only with effect from 12.06.1976. It appears that no notice was issued to the respondent before that conclusion was arrived at, and recovery of the differential amount was effected.

We would have given quietus to the matter here itself, had the appellate authority or the learned Single Judge been addressed the issue and recorded the finding, as to the exact date of acquisition of valid Matriculation qualification. In fact the learned Single Judge expressed a serious doubt about the eligibility of the respondent to get the benefit of pay scale of Matric trained teacher with effect from 20th April, 1971 though he made a reference to the Government order dated 21.7.1975. He did not hold that the respondent fits into the conditions stipulated therein.

We are of the view that the matter needs proper verification and determination by the concerned authority since it involves huge financial implication for the State, and is likely to become a precedent.

We, therefore, allow this Letters Patent Appeal

and set aside the order dated 03.03.2010 passed by the learned Single Judge in CWJC No.11501 of 2004. We also hereby set aside the order dated 12.03.2004 passed by the appellants. The same shall be treated as a show cause notice to the respondent. She shall be entitled to submit her explanation/representation within a period of four weeks from today. The Director, Primary Education, Bihar, Patna- 2nd appellant herein shall take into account, the representation, and pass appropriate order as to whether the Prathama Examination from Hindi Sahitya Sammelan, Prayag, can be treated as equivalent to Matriculation on the basis of the Government Order dated 21.7.1975; within 3 months, from today.

Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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