IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16911 of 2008

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Tej Nath Mishra, son of late Chandra Nath Mishra, resident of Village Biraul, P.S. Pandaul, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. Director, Secondary Education
4. Deputy Director, Secondary Education, Bihar Secondary Education Office, Budha Marg, Patna.
5. District Education Officer, Madhubani
6. Accountant General, Bihar, Bir Chand Patel Path, Patna.
7. Senior Accounts Officer, Bihar, Bir Chand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner	: Mr. Binodanand Mishra, Advocate
For the State	: Mr. Rakesh Prabhat, AC to SC 9
For Accountant General	: Mr. L. P. K. Rajgrihar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-08-2015

Heard learned counsel for the parties.

The present writ application has been filed for quashing the order contained in Memo No. Pen-5-323 dated 01.06.2006 issued by the respondent no. 7 by which the pensionable service of the petitioner was directed to be counted with effect from 01.03.1983 and further quashing the order contained in Memo No. 2326 dated 12.06.2007 by which the respondent no. 3 had ordered that pensionable service would be only for the period 01.03.1983 to 31.01.2006.

Learned counsel for the petitioner submits that initially he had joined on 26.03.1969 though he took leave in 1972 but returned and joined on 01.03.1983. Learned counsel submits that once the authorities have granted extraordinary leave for the period when the petitioner was on leave, though he may not be paid the salary and other emoluments for the said period but while computing the pensionary benefits, the period has to be taken uninterruptedly from 26.03.1969 and not 01.03.1983. It is submitted that the petitioner was never subjected to any show cause nor any proceeding started against him by invoking the powers available to the Government under Rule 76 of the Bihar Service Code and thus the absence not resulting in dismissal, the period has to be necessarily counted notionally for grant of pensionary benefits. For such proposition, learned counsel has relied upon the judgments of this Court in the case of **Smt. Pravabati Sengupta vs. State of Bihar** reported in **1989 PLJR 485** and **Dr. Sunil Kumar v. State of Bihar** reported in **2009 (2) PLJR 279.**

Though learned counsel for the State has filed counter affidavit supporting the impugned orders but when called upon to assist the Court as to the legal position, both he and learned counsel for the Accountant General admit that in the absence of any proceeding or termination order or penalty imposed, once extraordinary leave has been granted, the entire service period becomes uninterrupted without break and thus the authorities are required to pay the retiral benefits computing the pensionable service of the petitioner from 26.03.1969 to 31.01.2006.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court is in agreement with the submissions of learned counsel for the petitioner which has been fairly accepted by the learned counsel for the respondents.

In view of the aforementioned decisions, the writ petition stands disposed off with a direction to the respondent no. 5

to pay the pensionary benefits due to the petitioner in accordance with law treating him to be in service from 26.03.1969 till the date he superannuated i.e., 31.01.2006, within two months from the date of production of a copy of this order before him.

(Ahsanuddin Amanullah, J)

Anjani/-

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