

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1945 of 2015

Onkar Nath S/o Brij Bhushan Singh, resident of Village - Nagwan, P.S. Naubatpur,
District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, (Secondary Education), Bihar, Patna.
4. The District Education Officer, Patna.
5. The District Programme Officer (Establishment), Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi
For the Respondent/s: Mr. ROY SHIVAJI NATH, Sr. Advocate, AAG 3
Mr. Sunil Kumar Ravi, AC to AAG 3

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 30-11-2015

Petitioner is a clerk in a Project Girls High School, Naubatpur at Nagwan, in the district of Patna. According to him, he has been in service after having been duly appointed by the Managing Committee right from 5.2.1985. There are materials to indicate this position such as Annexure-7 to the writ application. But that position did not remain static. One Kamlesh Mishra approached the High Court by filing CWJC No. 7429 of 1999 when his appointment as a clerk in the said school was not being recognized or acknowledged.

2. But since there is an old saying that 'Time and tide waits for none', similarly many other developments have taken place with regard to status of teaching and non-teaching employees of such

project schools. The matter had originated at the High Court level but travelled to Hon`ble Supreme Court. A judgment was rendered by the Hon`ble Apex Court, which is reported in **2006 (1) PLJR 483 (SC)**.

3. One of the directions of the Hon`ble Apex Court was to constitute 3-Member Committee who will carry out an inquiry in each and every institution and based on the status of the employees reflected from their records, recommendations would be made with regard to recognition of service.

4. The 3-Member Committee did make inquiry even with regard to this institution and the recommendation has been brought on record as Annexure-6. Even here the petitioner's name does find mention.

5. With the above developments and the long pendency of the writ application and since the original prayer had somewhat lost its meaning, Interlocutory Application was filed by Kamlesh Mishra in his writ application, which was registered as I.A No. 7299 of 2009. The Interlocutory Application was allowed. The present petitioner was a party to the said writ application. The learned Single Judge, after hearing the parties to the disputes, came to the following conclusion:

“In the circumstances, respondents are directed to examine from the records of the school, as to whether, even after passing of Annexure-1,



petitioner had continued in service in the school, and had marked his attendance regularly till the Annexure-15 was issued, or not. In case, the documents establish that he continued in service during the entire period till 21.7.2008, he will be entitled to his full salary with all consequential benefits. If on the other hand, the documents do not establish that he continued in service in the school during this period, he shall be paid only 25% of his basic salary plus D.A. of the period till the date of his superannuation by the respondents.

So far as his consequential benefits subsequent to 21.7.2008 are concerned, admittedly he is out of service. Therefore, he is not entitled for the same. But, for pensionary benefits, he shall be treated as having continued in regular service under the Government till his date of superannuation, that is till 31.7.2009, with all consequential benefits of salary, increment etc. on notional basis for this period and his pensionary benefits shall be calculated on that basis and will be paid to him accordingly.

The respondents shall take steps in this regard within four months from the date of receipt/production of a copy of this order and the Director, Secondary Education shall be personally responsible for implementation of this order.

This writ application is allowed with the aforesaid observations and directions.

It is made clear that this Court has not made any observation in respect of services of private respondent. Therefore, his service shall not get affected by this period in any way.”

6. Pursuant to the above direction of the learned Single Judge, the Director, Secondary Education, Government of Bihar, took some decisions which are reflected from Annexures- 10 and 11 to the writ application. It is Annexure-11 which has brought the petitioner to the High Court because by virtue of this order dated 20th March, 2014, the date of recognition of service of the present petitioner indicated is 24.6.2008. Petitioner wants quashing of this decision and in support thereof, counsel representing the petitioner submits that if the records reflect and indicate that this petitioner has been in service right from 1985 and it had to be given recognition or was recommended at least from 1.1.1989 then where was the occasion for recognizing the service from 24.6.2008. The concluding part of the order, quoted above, passed by the learned Single Judge in the case of Kamlesh Mishra, did indicate that the status of the present petitioner would not alter or change. It is enough direction for the present petitioner, so far as his continuance and recognition of service is concerned. No doubt in Annexure-11 there is a mention of some judicial order based on

which the date 24.6.2008 was given for recognition of service of the petitioner.

7. The State was directed to file counter affidavit and explain the position. They take a stand which is concluded in para 9 as here under:

“ Para 9- That while considering the claims of teaching and none-teaching staffs of the School in question for their approval of services w.e.f. 01.01.89 or other dates, the matter was duly considered in the department. During the consideration of the matter of the petitioner, it was found that in the School in question only one post of Clerk is sanctioned and against which in compliance of the order of the Hon`ble High Court, the services of Sri Kamlesh Mishra have been approved w.e.f. 01.01.89 and Sri Mishra Superannuated from the post of Clerk on 31.7.2009. Therefore, against one post the services of more than one person cannot be approved and accordingly, his services has been approved w.e.f. 24.06.2008 i.e. the date from which his services was approved and the Hon`ble High Court was also pleased to order not to get effected the services of the present writ petitioner. As per the provisions of Rules and Circulars after giving the approval of services of Sri Kamlesh Mishra against the Single post of Clerk, the present writ petitioner

had not any claim for the approval of his services, but only in compliance of the order of the Hon`ble High Court, he remained continue in service”.

8. If the above position is analyzed, there is no dispute that there was only one post of clerk sanctioned in the said school. If it was so, then two persons could not be shown working simultaneously.

9. Since there was a decisive order in favour of Kamlesh Mishra, and Kamlesh Mishra was allowed the benefit of service from 1.1.1989 till his date of superannuation in terms of the order of the learned Single Judge, the post of clerk in the said school became vacant only after superannuation of Kamlesh Mishra. This is the reason why despite the petitioner having continued in service from much earlier era was given recommendation from 24.6.2008.

10. Whatever be the contention of the learned counsel for the present petitioner, if any interpretation is given on the arguments of the present petitioner with regard to continuance of service from previous date, it will have a direct bearing as well as reflection on the previous direction of the learned Single Judge issued in the case of Kamlesh Mishra. Since there is a decisive order in favour of Kamlesh Mishra to give recognition of his service as well as grant benefit of such appointment and continuance in service till his superannuation, the post can only become available to the present

petitioner thereafter i.e. 24.6.2008.

11. It may be an ironical situation that despite the petitioner being smug about so called protection which was given in the concluding part of the previous order of the learned Single Judge, in the case of Kamlesh Mishra, the petitioner did not read the findings and fall out of the said decision in true letter and spirit.

12. Counsel before parting also submits that there is a problem in the sense that he is not getting salary since July 2014. He is supposed to be a subscriber to PRAN on the basis of recognition of service in terms of Annexure-11 but since it is not being originated in the system, the salary has also been stopped.

13. The reason is attributable to the petitioner. If he still insists on providing a date of service from the previous date over and above what has been provided to him in terms of Annexure-11, then the system will surely reject such date. If the petitioner provides the correct data in terms of Annexure-11, PRAN will be generated and the reason for withholding salary will vanish and petitioner will get his salary.

14. Writ application is, therefore, required to be dismissed. However, the petitioner is given liberty to provide the correct data/ inputs to the Central Record Keeping Agency of NSDL. The moment it throws up the PRAN number, the concerned authority will ensure

that petitioner starts getting his salary regularly and even the salary withheld since July 2014 will be duly sanctioned and paid to him.

15. All this must be done within a period of three months.

(Ajay Kumar Tripathi, J)

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