

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.495 of 2011

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Ganesh Prasad Gupta son of Late Suba Mahto, Resident of village
Ahiyapur, P.S. Haspura, Distt. Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Finance Deptt. Govt. Of Bihar, Patna
3. The Joint Secretary, Finance Deptt. Govt. Of Bihar, Patna
4. The Director Secondary Education Deptt. Govt. Of Bihar, Budh Marg,
Patna
5. The Deputy Director, Secondary Education, Bihar, Patna
6. The District Education Officer, Aurangabad, Bihar
7. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Ram Chandra Prasad Bharti

For the Respondent/s : AC to SC No. 30

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 28-09-2015 Heard Sri Ram Chandra Prasad Bharti, learned counsel
for the petitioner and learned AC to SC No. 30.

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India has prayed for quashing of office order contained in Memo No. 4509 dated 26.10.2010 issued under the signature of Director, Secondary Education, Bihar, Patna, whereby request of the petitioner for regularizing his services spent between 1.11.1969 to 5.4.1978 during which the petitioner was functioning as Assistant Teacher in Ram Krishnapur Shree Gyan Mandir, Howrah, West Bengal, was rejected.

Learned counsel for the petitioner submits that earlier the petitioner was appointed as Assistant Teacher in the school at West Bengal on 1.11.1969 and continued there up to 22.11.1977. However, after advertisement was published for selection and appointment of Assistant Teacher in Bihar by the Bihar Education Service Commission, Patna he applied and subsequently he was selected and appointment vide Annexure - '1' to the writ petition which was issued on 8.11.1977. It has been claimed that pursuant to the appointment letter issued the petitioner approached the concerned school i.e. High School, Rukundi, Goh, Aurangabad on 23.11.1977 but his joining was not accepted and finally his joining was accepted on 16.3.1978 whereas as in the counter affidavit date of joining has been mentioned as 6.4.1978. The petitioner functioning as Assistant Teacher finally retired from the government of Bihar on 23.9.2006. The petitioner retired as Assistant Teacher on 23.9.2006 from Rajkiyakrit Uchya Vidyalaya, Haspura. It has been claimed that subsequently petitioner noticed that his earlier service period spent in the State of West Bengal was not considered and as such he filed representation before the Deputy Director, Secondary Education, Government of Bihar vide Annexure - '2' to the writ petition for regularizing the period and

fixing pension in accordance with law.

Learned counsel for the petitioner has referred to Annexure – '3' to the writ petition to show that Deputy Director, Secondary Education had asked the District Education Officer, Aurangabad for his comment on the claim of the petitioner and finally information was received from the Administrator- cum- Inspector, Ramkrishnapur, Shree Gyan Mandir, Howrah (West Bengal) which suggests that the petitioner had functioned in the said school, clarifying that the said school was recognized school by the West Bengal Board of Secondary Education and service of the Teachers employed in the said school was pensionable. This communication was made vide Annexure - '4' to the writ petition which was addressed to the District Education Officer, Aurangabad (Bihar). Taking cue from the aforesaid communications, learned counsel for the petitioner submits that the petitioner is entitled to firstly get this period regularized i.e. from the date when he left the service from the school at West Bengal till the date of joining in Bihar and also for getting all the benefits including regularization of his service with effect from his initial date of appointment in West Bengal and also for fixing pension treating the service of the petitioner which was rendered by him in the school at West Bengal. Learned counsel for the

petitioner has further argued that in the counter affidavit, the respondents have not specifically controverted the stand taken by the petitioner and as such, he submits that the writ petition requires to be allowed. The petitioner has also filed reply to the counter affidavit.

Learned State Counsel has opposed the prayer of the petitioner. By way of referring to the counter affidavit he submits that the petitioner though had approached for his joining on 22.11.1977 in the High School, Rukunti, Aurangabad, but joining was not allowed but subsequently his joining was accepted on 6.4.1978.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Of- course in the writ petition certain documents have been brought on record to substantiate that the earlier service of the petitioner in the West Bengal was pensionable but on record there is no chit of paper/ document or any instruction to substantiate that the period rendered by the petitioner in the State of West Bengal shall be counted for the purposes of fixation of pension or other benefits in the State of Bihar whereas it is admitted case of the petitioner that petitioner as per advertisement published by the Bihar Education Service Commission was selected and finally he was

appointed in the year 1978. In absence of any such circular or instruction there is no point to examine the correctness or validity of Annexure – ‘5’ to the writ petition. I do not see any defect in Annexure - ‘5’ to the writ petition. Accordingly the writ petition stands dismissed.

(Rakesh Kumar, J)

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