

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1443 of 2012
IN
Civil Writ Jurisdiction Case No. 5037 of 1997

- =====
1. The State of Bihar.
 2. The Secretary, Human Resources Development Department New Secretariat, Patna.
 3. The Additional Secretary, Human Resources Development Department New Secretariat, Patna
 4. The Special Director, Secondary Education (Sanskrit) New Secretariat, Patna.
 5. The Bihar Sanskrit Shiksha Board, Through Its Chairman Boring Canal Road, Patna.
 6. The Secretary, Bihar Sanskrit Shiksha Board Boring Canal Road, Patna.
 7. The District Magistrate, Darbhanga .
 8. The Ad-Hoc Committee, Gautam Sanskrit High School Ahilyasthan, P.O.-Ahiyari, P.S.-Kamtaul, Distt-Darbhangha, Through Its Secretary Block Development Officer, Jale Block, Distt-Darbhangha.
- Appellants.

Versus

Rajdeo Thakur, S/o Shri Awadh Narayan Thakur, R/O Vill-Ahiyarai, P.S.-Kantaul, District-Darbhangha. Respondent.

=====

Appearance :

For the Appellants : Mrs. Archana Shahi, AC to GA-8.
For the Respondent : Mr. Vishwanath Prasad Singh, Sr. Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-12-2015

I.A. No. 6033/ 2012 has been filed for condoning the delay in filing the present Letters Patent Appeal.

For the reasons stated in the limitation petition, the delay in filing the appeal is condoned.

Accordingly I.A. No. 6033/ 2012 is allowed.

Heard Mr. Vishwanath Prasad Singh, learned senior counsel for the sole contesting respondent and learned counsel

for the appellants and with their consent, this Letters Patent Appeal is being disposed of at this stage itself.

The present Intra-Court appeal has been filed against the judgment and order dated 13.07.2010 passed in C.W.J.C. No. 5037 of 1997. The writ petitioner/respondent had come to the Court for a direction to the State Government to pay his salary as Assistant Teacher in Gautam Sanskrit High School, Ahilyasthan, P.O.- Ahiyari, District- Darbhanga (hereinafter referred to as the 'school').

The facts are not in dispute. It appears that on 02.03.1981, the State Government decided to pay salary and dearness allowance to teachers in Sanskrit Schools recognized by the Bihar Sanskrit Shiksha Board with effect from 01.04.1980. It goes without saying that there were certain parameters on which the sanctioned strength of those schools was to be determined. On 08.06.1981, the writ petitioner/respondent was appointed as Assistant Teacher in the school by the Managing Committee of the school, which was undisputedly approved by the Sanskrit Shiksha Board on 09.05.1985. Where after the writ petitioner/respondent was made permanent teacher with effect from 28.01.1986 and salaries were then paid to the petitioner. On 18.12.1989, the Bihar Non-Government Sanskrit



School (Management and Control) Ordinance was promulgated which included the take over of management of the school of the writ petitioner/respondent as well but the ordinance thereafter lapsed. After the lapse of ordinance, the State Government then took a decision to upgrade twenty five (25) Sanskrit Schools wherein one additional Teacher for Science was provided. In our view, this controversy of ordinance lapsing and subsequent up-gradation including inclusion of the science is of no relevance.

In the present litigation, as is being sought to be brought in by the State, the reasons are simple. The State does not deny the obligation taken by it as far back as in 1980, as noted above, to pay the salary and dearness allowance to teachers of this school. In fact, payments were also made up to and after the ordinance but, thereafter, it has been stopped. This obligation, which has been undertaken by the State, has never been shown to have been rescinded by the State Government. All that is being said is that by this ordinance, the State Government, having taken over the management and the ordinance then lapsing, State was not concerned with the management in anyway. We are afraid that we can not accept this for the simple reason that the obligation was taken by the

state much prior to the ordinance. The ordinance only strengthened certain other areas, but did not retract from the obligation earlier undertaken. Therefore, even when the ordinance lapsed, the obligation did not stand obliterated. The obligation undertaken in year 1980 continued.

Another controversy as sought to be raised was, whether petitioner was appointed as a Science Teacher or not. The writ petitioner was a science graduate. Firstly, it is too late in the day to raise this controversy. The writ petitioner/respondent was undisputedly paid his salary and the State had admitted its obligation and liability to pay even prior to the ordinance. It can not turn around and now start challenging the same to avoid the liability. Moreover, the learned Single Judge has rightly noticed that the petitioner, though Science Graduate, was appointed as a Maths Teacher, which was duly sanctioned post and which post continued.

In that view of the matter, I do not find any merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/AFR

U			
---	--	--	--