

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1481 of 2016

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Ram Lagan Singh son of Saryug Prasad Singh, retired Assistant Teacher, Girls Middle School, Kumarganj, Anchal + P.S.- Kishanpur, District- Supaul

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
3. The Director, Primary Education, Education Department, Govt. of Bihar, Patna
4. The Regional Deputy Director of Education, Kosi Division, Saharsa
5. The District Education Officer, Supaul
6. The District Programme Officer (Establishment), Supaul
7. The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate
For the Accountant General : Mr. Rabindra Kumar Priyadarshi, Advocate
For the State : Mr. Anwar Karim, A.C. to G.P.-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 16-12-2016

In the present application the petitioner has prayed for a direction to the respondents to make payment of his retiral dues including pension, Gratuity, Leave encashment, Group Insurance and General Provident Fund.

2. The petitioner retired from service of the respondent-State while he was working as Assistant Teacher in Girls Middle School, Kumarganj with effect from 30th June, 2011 by virtue of an order contained in letter no.79 dated 9th January, 2013 issued under the signature of the District Education Officer, Supaul. Though the



petitioner discharged his duties till 31st December, 2012, he was directed to retire with effect from 30th June, 2011 on the ground that he and several other teachers were appointed by the Managing Committee of the school when they were below the age of eighteen years.

3. The contention of the petitioner is that the petitioner was provided provisional pension for few months but later on the same has been stopped and when he requested to the authority concerned in this regard he was asked to give an application that the salary paid to him from 30th June, 2011 to 31st December, 2012 shall be recovered from his retiral dues. Since the petitioner did not furnish the undertaking, all his post retiral benefits have been withheld. It is contended that in an exactly similar situation in the matter of *Ganga Ram Mahto vs. The State of Bihar and Others (C.W.J.C. No.3235 of 2015)*, this Court vide order dated 26.2.2012 directed the respondents not to recover the salary for the period the petitioner had worked and to make payment of his retiral dues on the basis of retirement after completion of forty two years of service.

4. Per contra, learned counsel for the State has submitted that this writ petition is fit to be dismissed on the ground that initial appointment of the petitioner was bad in the eye of law. He stated that minimum age for entering into government service is eighteen years



and admittedly the petitioner was appointed by the then Managing Committee while he was less than fifteen years of age. He has contended that the petitioner is not entitled to receive any pensionary benefits in view of the appointment being contrary to the provision of law.

5. I have heard learned counsel for the parties and perused the records.

6. The case of the petitioner is squarely covered by the order passed by this Court in the matter of **Ganga Ram Mahto** (supra) as contained in Annexure-2 to the present application. It is not in dispute that the petitioner was allowed to work as an Assistant Teacher for over forty two years. He was paid salary from the government fund. He discharged his duties on a substantive post in a permanent government establishment. The question regarding his entry into service at the age of less than 18 years was never raised by the respondents till the issuance of the order dated 31st December, 2012 whereby he was directed to retire with effect from 30th June, 2011.

7. In that view of the matter, at this stage, the State cannot deny him the payment of retiral dues on the ground that his initial entry into service was contrary to law. Admittedly, the petitioner discharged his duties till 31st December, 2012. There is no allegation of any fraud or misrepresentation on the part of the petitioner. Under



such circumstances, the respondents cannot be allowed to recover the salary granted to the petitioner between 30th June, 2011 to December, 2012.

8. Accordingly, I direct the respondents not to recover the salary for the period the petitioner had worked and to make payment of his retiral dues on the basis of retirement after completion of forty two years of service. The entire payment of retiral dues must be paid within two months from today failing which the petitioner would be entitled to receive eight per cent interest over the admissible amount from the period it became due till the date of actual payment.

9. With the aforesaid observation and direction, the writ petition is allowed. There shall be no order as to costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.12.2016
Transmission Date	

