

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.170 of 2012

IN

Civil Writ Jurisdiction Case No. 16443 of 2008

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Ram Chandra Prasad Singh, S/O Late Deoki Nandan Singh, R/O Vilage- Dubiyahi
Ram Krishna, P.O.- Dubiyahi Ram Krishna, P.S.- Saraiya, District-Muzaffarpur,
presently posted as Incharge Headmaster at Government Middle School, Aropur,
P.S.- Saraiya, District-Muzaffarpur

.... Appellant

Versus

1. The State of Bihar
2. The Commissioner cum Secretary Education Department, Vikash Bhawan, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Education Officer, Muzaffarpur
5. The District Superintendent of Education, Muzaffarpur
6. The District Magistrate, Muzaffarpur

.... Respondent

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Appearance :

For the Appellant : Mr. Bipin Bihari Singh, Advocate
Mr. Anshu Dhar Sharma, Advocate

For the State : Mr. Krishna Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 23-08-2016

Appellant is the unsuccessful writ
petitioner. In fact, the writ petition was not dismissed but the
petitioner-appellant was directed to make detailed
representation before the Director, Primary Education,
Government of Bihar for redressal of his grievance. It
appears that the writ petition was filed being aggrieved by the
orders issued by the District Superintendent of Education,



Muzaffarpur (Annexure-6) and follow up order (Annexure-7) whereby in 2006, it was said that the petitioner-appellant had been wrongly appointed as a B.Sc. trained teacher in the middle school. He should have been appointed as matriculate trained teacher. Accordingly, directions were issued to revert him and further ordered recovery of excess salary paid. Petitioner-appellant challenged it on the ground that after due selection process he was selected for being appointed as teacher in the graduate trained scale and appointed as such. Letter of appointment not having reached, he joined late with permission of the authorities and was, accordingly, posted. He further submitted that there were 22 persons similarly situated, out of which 16 continued to get graduate trained scale and he and few others were unfavourably treated.

Learned Single Judge noticing that there are several disputed questions of fact and it is appropriate for the authorities themselves first to apply themselves to the facts in question, directed the petitioner-appellant to file detailed representation before the Director, Primary Education, Government of Bihar, Patna who would consider the matter after hearing the parties and pass appropriate orders. We, in our view, cannot question this decision. It is



always advisable for the authorities under the Act to determine questions of fact, if a party disputes them and comes to this Court, but that does not hold correct so far as recovery is concerned. From the appointment letter it is clear that petitioner-appellant was appointed on graduate trained scale of pay. That being so, the petitioner-appellant having performed duties of a graduate trained teacher, for no fault of his, there cannot be any recovery in respect thereof. Thus, Annexure-7 to the writ petition cannot be sustained in so far as recovery is concerned.

Having heard learned counsel for the State and learned counsel for the writ petitioner-appellant, we would allow this appeal in part, inasmuch as, we would set aside the order by which recovery has been ordered in the year 2006 with effect from 1990, the date of his joining, but we would not interfere with the directions of the learned Single Judge with regard to making of representation before the authorities for consideration of the case. If any such representation is made before the Director, Primary Education, Government of Bihar, Patna, the Director would be obliged to consider the same and after hearing the parties pass appropriate speaking order in that regard and

communicate the same within three months.

The appeal is accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
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