

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2986 of 2011

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Sita Bala Choudhary Wife of Bausdeo Prasad Choudhary Resident of
Village Gouripur, P.S. Bishunpur, District Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Secretary-cum-Commissioner, Human Resources Development Department, Government of Bihar, New Secretariat, Patna
2. The Director [Secondary Education] Human Resources Development Department, Government of Bihar, New Secretariat, Patna
3. Deputy Director [Secondary Education] Human Resources Development Department, Government of Bihar, Budh Marg, Patna - 800001
4. District Education Officer, Bhagalpur
5. District Inspector of School, Bhagalpur.
6. District Education Officer, Banka.

.... Respondents

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Appearance :

For the Petitioner : Mr. Sunil Srivastava

Mr. Durga Narayan

For the Respondents : AC to Addl. Advocate General - 6

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 14-03-2016

Heard Sri Sunil Srivastava, learned counsel, who was assisted by Sri Durga Narayan, learned counsel for the petitioner and learned A.C. to Addl. Advocate General - 6.

2. The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has made a limited prayer to modify the order dated 29-10-2007 issued under the signature of Director, Secondary Education, Human Resources Development Department, whereby though the petitioner was given notional promotion w.e.f. 02-10-1987 as Headmistress, she was

denied the monetary benefit.

3. It is case of the petitioner that she started her career as Assistant Teacher in one Bhagwan Basu Pujaya Jain Balika School, Bhagalpur and remained there as Assistant Teacher up-to 31-12-1966. Thereafter, she was promoted as Headmistress of the said school and continued in the same capacity till 30-08-1971. Thereafter, she joined one another school i.e. Budheshwar Sanskrit High School, Bhagalpur as Assistant Teacher and worked there till 31-12-1974. She was subsequently appointed Headmistress of one Adarsh Balika High School as Headmistress, where she joined on 01-01-1975 and since then, she was continuing as Headmistress in the said school. The said school was recognized by the government on 10-12-1976 and finally, got recognition on 28-04-1978. Finally, the said school was taken over by the Government of Bihar w.e.f. 02-10-1980. It is case of the petitioner that since the petitioner was not being provided the benefit of Headmistress, earlier she filed a writ petition, vide C.W.J.C. No. 4792 of 2001. It was claimed that she had already completed seven years, as incharge Headmistress, from the date of take over of the school i.e. 02-10-1980. The said writ petition was finally disposed of on 04-05-2007 granting liberty to the petitioner to file a detailed representation before the Director, Secondary Education, Govt. of Bihar, Patna, who was directed to



examine and pass reasoned order within specified time. After disposal of the writ petition, the petitioner filed a representation and finally the Director, Secondary Education, though has accepted the claim of the petitioner for regularization of her service, as Headmistress, w.e.f. 02-10-1987, but monetary benefit has been directed to be given from the date of the order i.e. order dated 29-10-2007, contained in Memo No. 812/Legal dated 01-11-2007.

4. Learned counsel for the petitioner submits that once it has been accepted that the petitioner had completed the minimum requirement of seven years experience from the date of her school was taken over by the government and she was discharging the duty of the Headmistress in the capacity of incharge Headmistress, certainly she is entitled to get the monetary benefit also from 02-10-1987. Learned counsel for the petitioner submits that though the Director, Secondary Education had noticed the direction of the Apex Court in *Civil Appeal No. 4032 of 1988 (A.K.Pradhan vs. State of Bihar & Ors.)*, he has incorrectly interpreted the order of the Apex Court. He submits that in view of the order of the Apex Court i.e. **Annexure - 4** to the writ petition, the service of the petitioner was required to be regularized after completion of seven years from the date of taking over of the institution by the government.

5. Learned State counsel, by way of referring to



avermment made in the counter affidavit, had tried to justify the order impugned and he also tried to persuade the Court that the order has been passed in strict compliance of the order of the Apex Court. But, he was not in a position to satisfy the Court on the correct interpretation of the Apex Court order. The last paragraph of the order of the Apex Court is required to be quoted hereinbelow for just adjudication in the present matter:-

“We, therefore, dispose of this appeal with the observation that the appellant, if not already regularized as Head Master, shall be considered for regularization w.e.f. the date on which he completed seven years of service reckoned from the date on which the institution was taken over by the Government. There will be no order as to costs.”

6. On perusal of the aforesaid observation, there is no confusion in the mind of the Court that regularization is to be effected from the date of completion of seven years after the school was taken over. The order impugned categorically states that she had completed seven years from the date of take over of the school i.e. from 02-10-1980 on 02-10-1987 and only after noticing this fact, the petitioner's service has been regularized by the impugned order, but by way of incorrectly interpreting the order of the Apex Court, the petitioner has been denied monetary benefit.

7. In view of facts and circumstances, the Court is of the

considered opinion that the petitioner is entitled to get monetary benefit also from the date i.e. 02-10-1987.

8. Accordingly, the writ petition is allowed with modifying the order dated 29-10-2007, contained in Memo No. 812/Legal dated 01-11-2007 (**Annexure - 1** to the writ petition) to the extent that instead of notional promotion from 02-10-1987, the petitioner shall be provided all the monetary benefit w.e.f. 02-10-1987. The respondent authority is required to calculate the difference and pay all the dues to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order.

9. The writ petition stands allowed with all consequential benefits.

(Rakesh Kumar, J.)

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