

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1618 of 2012
IN
Civil Writ Jurisdiction Case No. 18507 of 2008**

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Tapnath Ram, S/O Late Baruneshwar Ram, Resident Of Village- Sikatia, P.O.-
Sikatia, P.S.- Maharajganj, District- Siwan at present working as the Head Master
Of Nationalised Practical High School, Sikatia, Maharajganj, Siwan.

.... Petitioner-Appellant

Versus

1. The State of Bihar, through the Secretary Secondary Education, Department of
HRD, Government Of Bihar, Patna
2. The Secretary, Secondary Education, Deptt. of HRD, Government of Bihar,
Patna
3. The Director, Secondary Education, the Deptt. of HRD, Government of Bihar,
Patna
4. The District Education Officer (D.E.O.), District- Siwan.

.... Respondents-Respondents

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Appearance :

For the Appellant : Mr. Raghav Prasad No.-1, Advocate

For the Respondents : Mr. S. Raza Ahmad A A G- 9
Mr. Vishwambhar Prasad, A C to A A G -9

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
And
HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-02-2016

The challenge in the present Letters Patent Appeal is to
an order passed by the learned Single Bench on 2nd of April, 2012 in
CWJC No.18507 of 2008, whereby a writ of mandamus
commanding the respondents to count the services of the appellant

from the date of his initial appointment, i.e. 10th of May, 1985 as Assistant Teacher and with effect from 10th of November, 1987 as Headmaster of the Practical High School, Siktia, was not accepted.

The appellant joined as an Assistant Teacher in Practical High School, Siktia, (hereinafter referred to as 'the School') on 10th of May, 1985 and subsequently as Headmaster on 10th of November, 1987. The said School was granted minority status vide Notification dated 25th of April, 1979. In 1980, an Ordinance, i.e. Bihar Non-Government Secondary School (Taking over of Management and Control) Ordinance, 1980 was promulgated. In pursuance of such Act, a Notification was issued on 6th of March, 1981 taking over the Headmaster, Assistant Teacher etc. by revoking the minority status of the School. The said Notification dated 6th of March, 1981 became subject matter of challenge before this Court in CWJC No.1145 of 1981 (Bihar Rajya Arya Pratinidhi Sabha & Ors.). The operation of the said Notification was initially stayed, but later on, the Notification dated 06.03.1981 was quashed vide judgment dated 13th of August, 1987 while allowing the said writ petition. It is thereafter, a decision has been taken by the State Government on 17th of November, 2003 revoking the earlier Notification dated 25th of April, 1979 declaring the School as a minority institution and consequently the School was

taken over by the Government by separate Notification dated 10th of January, 2005, but with effect from 17th November, 2003.

The grievance of the appellant is that the School shall be deemed to be taken over with effect from 6th of March, 1981 and not from 17th of November, 2003. Therefore, the appellant shall be entitled to pay and allowances as a government teacher with effect from his appointment.

The learned Single Bench has found that the Notification dated 6th of March, 1981 never came into operation as such operation of such Notification was stayed by this Court in CWJC No.1145 of 1981 which was quashed subsequently on 13th of August, 1987.

It may also be mentioned that the Bihar Non-Government Secondary School (Taking over of Management and Control) Ordinance, 1980 was substituted by Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 (Bihar Act No. 33 of 1982) (hereinafter referred to as 'the Act') notified on 24th of January, 1982. It is not disputed that the minority institutions were not to be taken over in terms of Section 3 of the aforesaid Ordinance and the Act. The School was conferred minority status before the commencement of the Ordinance and the Act. The Notification dated 6th of March, 1981 rescinding the minority status



was set aside by this Court. The School continued to be a minority institution till such time the minority status was revoked on 17th of November, 2003. The provision of the Ordinance and the Act, thus, could not be made applicable to the School before revocation of the status as a minority institution which was only on 17th of November, 2003. Therefore, the finding recorded by the learned Single Bench that the appellant is not entitled to any amendment in the Notification of taking over of the School from 17th of November, 2003 does not warrant any interference in the present Letters Patent Appeal.

Another argument raised by learned counsel for the appellant needs to be noticed. It is argued that the appellant has worked as Headmaster of the School since 10th of November, 1987 and, therefore, his pay, which was being drawn by him on the date of taking over of the School, needs to be protected.

We do not find any merit in the said argument. Firstly, no such plea was raised in the writ petition nor any argument was raised at the time of hearing of the writ petition. Secondly, Section 9 of the Act contemplates that pay and allowances shall be such as may be fixed by the State Government. There is no challenge to the fixation of salary of the appellant as Headmaster in the basic pay scale of the equivalent post in the State Government. Therefore, the

appellant cannot be permitted to claim pay protection as Headmaster from the date of his initial appointment.

In view thereof, we find no merit in the present Letters Patent Appeal. The Letters Patent Appeal, thus, stands dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

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