

B IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22045 of 2014

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1. Ramjee Sharma Son of Late Murari Prasad Singh resident of village - Shambhupura, P.S. - Naubatpur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Department, Govt. of Bihar, New Secretariat, Bailey Road, Patna - 1.
3. The Director, Secondary Education, Budh Marg, Patna, Budh Marg, Patna.
4. The Joint Director, Secondary Education, Govt. of Bihar, Budh Marg Road, Patna - 1.
5. The Deputy Director, Secondary Education, Govt. of Bihar, Budh Marg Road, Patna - 1.
6. The District Education Officer, Patna - 1.
7. The Accountant General, Bihar, Patna, Birchand Patel Path, Patna - 1.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anisur Rahman, Adv.
For the Respondent/s : Mr. Rakesh Prabhat, A.C. to SC-21
For the Accountant General : Mr. Ram Yash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-12-2016

Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present writ application the petitioner has claimed that the services rendered by him as Assistant Teacher in Government High School, Purainiya with effect from 27.01.1969 to 31.05.1970 and 01.07.1970 to 18.08.1978 should be counted for the purpose of pension. He has also prayed that after counting the aforesaid period, a direction be issued to pay full pension to the petitioner. Another prayer of the petitioner is to quash the order dated 23.09.2014, as



contained in Annexure-9 to the writ application, whereby the Director (Secondary Education), Bihar, Patna has rejected his prayer for counting the period commencing from 27.01.1969 to 31.05.1970 and 01.07.1970 to 18.08.1978 towards pension.

3. The petitioner has contended that he was appointed as Assistant Teacher (Science) in High School, Purainiya in the district of Patna and worked on the said post between 27.01.1969 to 18.08.1978. Thereafter, he was appointed as Headmaster in K.B.Sahay High School, Sheikhpura (Patna), a Government school. He joined the said school on 08.11.1979 and discharged his duties as Headmaster till 30.08.1993 whereafter he was transferred to T.P. High School, Bihta from where he retired on attaining the age of superannuation with effect from 31.01.2001.

4. It is contended by the learned counsel for the petitioner that the petitioner is entitled to counting of the entire period for the purpose of pension and other retiral benefits, but the respondents illegally denied to count the period mentioned in paragraph 2 of the order for pension. Being aggrieved, the petitioner filed a writ application before this Court vide C.W.J.C. No. 1502 of 2006 in which after hearing the parties the Court directed the petitioner vide order dated 06.12.2013 to file a representation supported by all relevant documents in his possession within five weeks and the respondent Director (Secondary Education) was directed to pass fresh



order in accordance with law on the claim of the petitioner. It is contended that thereafter on the representation of the petitioner, the Director (Secondary Education) passed the impugned order dated 23.09.2014 rejecting the claim of the petitioner for counting the period from 27.01.1969 to 31.05.190 and 01.07.1970 to 18.08.1978 towards pension on extraneous consideration without looking into the relevant rules/resolutions/circulars of the State Government. In support of his submission, learned counsel for the petitioner has placed his reliance on a judgment of this Court in *Shyam Kishore Singh Vs. State of Bihar [2007(2) PLJR 239]*.

5. The State has contested the matter.

6. It has been submitted on behalf of the State that the claim of the petitioner is based only on the basis of teaching experience certificate, which was produced for approval of his services as founder Headmaster. However, no proof was submitted by the petitioner that he had actually worked in the High School, Purnaiya, Patna or his services were approved by the competent authority and payments were made to him during the aforesaid period from the Government fund. It is also contended that the letter of appointment of the petitioner in proposed K.B. Sahay High School, Sheikhpura (Patna) is available from which it appears that in this proposed school he was appointed as an Assistant Teacher vide Memo No. 21 dated 15.12.1970 issued by the Secretary of the



aforesaid proposed school. Therefore, the claim of the petitioner that from 27.01.1969 to 18.08.1978 he was working in the High School, Purainiya, Patna is self-contradictory.

7. On the basis of these submissions, it has been contended by the learned counsel for the State that the claim of the petitioner was rightly rejected by the Director (Secondary Education) Bihar, Patna vide order, as contained in Annexure-9 to the writ application.

8. Learned counsel for the Accountant General submits that all the admissible retiral dues have already been authorized by the office of the Accountant General and no claim of the petitioner is pending before the Accountant General.

9. I have heard learned counsel for the parties and perused the record.

10. It would be evident from perusal of certificate dated 15.08.1979 issued by the Headmaster of the High School, Purainiya, Neura, Patna, as contained in Annexure-1 series of the writ application, that the petitioner was a science teacher of the School from 27th January, 1969 to 31st May, 1970 and July, 1970 to 18th August, 1978 and he submitted his resignation on 30th August, 1978. The aforesaid document has been brought on record by the petitioner himself. This would clearly suggest that prior to joining in the K.B. Sahay High School, Sheikhpura, Patna, the petitioner had already tendered his resignation as teacher of High School, Purnaiya on 30th



August, 1978. It would also appear from the aforesaid certificate that there was no continuity of service of the petitioner as he worked from 27.01.1969 to 31.05.1970 and 01.07.1970 to 18.08.1978. There is break in service between 31.05.1970 and 01.07.1970.

11. I also find substance in the argument advanced on behalf of the State that the claim of the petitioner is based merely on the basis of teaching experience certificate, which was produced by him for approval of his service as founder Headmaster. In this regard, no proof was submitted by the petitioner that he actually worked in the aforesaid school and his services were approved by the competent authority and that payments were made to him from the Government fund.

12. The facts of the case of the petitioner are not the same as that of the case of *Shyam Kishore Singh* (Supra) on which reliance has been placed by the petitioner. Further, in *State of Bihar & Anr. Vs. Bhagwan Singh (since dead) [2014(4) PLJR 229]*, a Full Bench of this Court has clearly held that the service of a Government servant would not qualify for pension unless the three conditions prescribed under Rule 58 of the Bihar Pension Rules, 1950 (for short 'Rules') are fulfilled.

13. In this regard, it would be profitable to refer Rules 58 and 61 of the Rules, which read as under :-

“58. The service of a Government servant does not qualify for pension unless it conforms to the



following three conditions:-

First - The service must be under Government.

Second - The employment must be substantive and permanent.

Third - The service must be paid by Government.

61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment”

14. In the instant case, apparently there is nothing on record to suggest that the petitioner was working on a substantive and permanent post and payment for the service was being made by the Government during the period of 31st May, 1970 and 18th August, 1978. In that view of the matter, I see no illegality in the order impugned passed by the Director (Secondary Education) State of Bihar, Patna whereby he has rejected the claim of the petitioner for counting of the period mentioned above for the purpose of pension.

15. Accordingly, the writ application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-12-2016
Transmission Date	

