

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.583 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 324 of 2014**

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1. Nitya Nand Jha, Son of Late Ram Sundar Jha, Resident of village- Mahishi, P.S.- Mahishi, District- Saharsa, presently retired from Assistant Teacher Uttrakamit Madhya Vidyalaya, Bhagbatpur, Anchal- Mahishi, District- Saharsa.
 2. Anant Kumar Singh, Son of Late Keshav Prasad Singh, Resident of village- Birgaon, P.S.- Jalai, District- Saharsa, presently retired from Assistant Teacher, Middle School, Gandaul, Anchal- Mahishi, District- Saharsa

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Director, Department of Primary Education, Government of Bihar, Patna
3. The Regional Deputy Director of Education, Koshi Division, Saharsa
4. District Programme Officer (Establishment), Saharsa
5. The Headmaster-Cum-Drawing and Disbursing Officer, Ugratara Middle School Mahishi, District- Saharsa

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhav Jha, Advocate.

For the Respondent/s : Mr. Prabhat Kumar, AC to GA-11.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 04-10-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to the order dated 09.01.2014 passed by the learned Single Bench, by which CWJC No. 324 of 2014, filed by the appellants, has been



dismissed.

3. The appellants were appointed in private schools in November, 1970. Their schools were taken over by the Government in the year 1980 and 1989 respectively and their services were also approved from the date of take over of the schools i.e., 23.12.1980 and 24.12.1989 respectively. They were made to superannuate with effect from 31.01.2013 and 30.11.2012 respectively in view of their age being computed as 18 years from the date of their initial appointment.

4. Being aggrieved by the same, the appellants moved before the learned Single Bench in CWJC No. 324 of 2014 and dismissal of the same, by order dated 09.01.2014, has given rise to the present Letters Patent Appeal.

5. Learned counsel for the appellants submitted that though they were appointed in November, 1970, but at the said time, the schools were privately managed by a Managing Committee and thus, the principle that they could not have been appointed prior to them attaining the age of 18 years, cannot be strictly applied in their case. It was submitted that on the date when the services of the appellants were approved by the Government i.e., 23.12.1980 and 24.12.1989, they were much above the age of 18 years and thus, their date of retirement ought to be considered in terms of their recorded date of



birth in their Matriculation certificate, which is 02.01.1955 and 26.01.1954 respectively, and thus, they could not have been made to retire with effect from 31.01.2013 and 30.11.2012, as has been done, before attaining the age of 60 years, which is the age of superannuation and according to which they would have superannuated on 31.01.2015 and 31.01.2014 respectively. It is submitted that the schools having been taken over in the year 1989, the period of service ought to be counted from that date taking into account the age recorded in their Matriculation Certificates and the Rule of having put in 42 years of service, cannot be applied in their case, as they were working in the schools when their schools were private and running without there being any monetary aid by the Government and thus, the appellants having been appointed before attaining the age of 18 years, in a private school would not be a bar for them not working till the age of 60 years, as per the Rules relating to superannuation in Government services.

6. Learned counsel for the State submitted that the services of the appellants were approved and taken over by the Government, not pursuant to a fresh or direct appointment by the Government rather by way of them being working in the private schools at the time of take over. Thus, the strict application of the Rules, relating to appointment, being given a go by, only because the appellants were



working in private schools at the time of taking over their services and they becoming Government servants, was clearly a fortuitous circumstance for them and thus, they cannot be given double benefit, in the sense that firstly they would become Government servants without facing the normal procedure laid down for appointment then by giving a go by to their illegal initial appointment inasmuch as it was before them having attaining the age of majority i.e., 18 years and then claim that they be allowed to be in service for more than 42 years.

7. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The appellants admittedly were appointed in private schools by the Managing Committee in the years 1980 and 1989 and if they had not attained the age of 18 years, such appointment could not have been valid or legal. Their initial entry into service was not in conformity with the Rules relating to recruitment and only because they were working at the time when the Government had taken over the schools, they were also absorbed as Government servants. Thus, it was a windfall for them as they became Government servants without having undergone the prescribed procedure laid down for such recruitment. Having got the benefit of becoming Government servant, if at all their services could have been taken over, it was necessary that their initial appointment



was taken as valid for such purposes and the Government deeming the age to be minimum 18 years, cannot be faulted. Thus, their age being notionally fixed as 18 years at the time of their initial appointment in the school, was necessary if at all their services was to be taken over by the Government as only teachers, validly and legally appointed, could have been absorbed in Government service. In such background, the decision of the authorities is sound and the writ petition has been rightly dismissed.

8. Accordingly, we do not find any error in the order of the learned Single Bench warranting interference and the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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