

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.750 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 9028 of 2013

Along with

Interlocutory Application No. 3121 of 2015

In

Letters Patent Appeal No.750 of 2015

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Mundrika Singh Son of Late Anant Singh Resident of village - Nishan Nagar Badi,
Post - Khadiya, Police Station - Shivsagar, District - Rohtas at Sasaram.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, New Secretariat, Government of Bihar, Patna.
3. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Dehri.
5. The Executive Engineer, Sone Baraj Division, Indrapuri, District - Rohtas at Sasaram.
6. The District Superintendent of Education, Rohtas at Sasaram.
7. The Headmaster, Sone Baraj Middle School, Indrapuri, District - Rohtas at Sasaram.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr. Aditya Nath Jha, AC to SC 18

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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: 06-09-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 3121 of 2015

2. The Interlocutory Application has been filed seeking
condonation of one day delay in filing of the Letters Patent Appeal.

3. Upon hearing learned counsel for the parties and



considering the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the delay in filing of the Letters Patent Appeal is condoned.

4. Interlocutory Application No. 3121 of 2015 stands disposed off.

Re.: Letters Patent Appeal No. 750 of 2015

5. The challenge in the present intra court appeal is to the order dated 21.07.2014 passed by the learned Single Bench by which C.W.J.C. No. 9028 of 2013 filed by the appellant has been dismissed.

6. The appellant was appointed as an Assistant Teacher in Sone Bandh Middle School, Indrapuri in the district of Rohtas on 19.12.1966 and joined on 02.01.1967. Thereafter, the appellant was appointed as an Assistant Teacher in Sone Bandh Higher Secondary School, Indrapuri under the Work Charge Establishment of the Water Resources Department on 13.12.1978. He was sanctioned leave without pay from 13.12.1978 till 12.06.1979 from Sone Bandh Middle School, Indrapuri. However, he continued to work in Sone Bandh Higher Secondary School, Indrapuri and superannuated on 28.02.2001. He was given his pensionary benefits for the period 13.12.1978 till his superannuation but being dissatisfied, the appellant



filed C.W.J.C. No. 9306 of 2006 for payment of his retiral dues counting his service from 02.01.1967. The same was disposed off by order dated 11.05.2011 with a direction to pay the undisputed amount within one month and if there was any dispute, the same to be settled within a period of three months and payment of retiral dues along with other undisputed dues including arrears of salary was to be paid within a period of four months in accordance with law. The matter having been considered, the Principal Secretary of the Department passed a reasoned order on 04.12.2012, rejecting the claim for pension after counting his service from 02.01.1967, which was impugned before the learned Single Bench in C.W.J.C. No. 9028 of 2013 and dismissal of the same has given rise to the present Letters Patent Appeal.

7. Learned counsel for the appellant submitted that the service rendered by him in Sone Bandh Middle School, Indrapuri, which is also a Government School, is required to be taken into consideration for computing the length of qualifying service for grant of pensionary benefits. He submitted that in terms of Rule 105 of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') provides for condoning the breakage and interruption in service. He further submitted that even the Headmaster of Sone Bandh Middle School, Indrapuri had written to the competent authority, including



the Chief Engineer of the Department, to make payment of retiral dues of the appellant treating his service to be continuous from 02.01.1967. Learned counsel submitted that even the Bihar Government circular contained in Memo No. 636 dated 18.07.1992 provides for condoning the breakage of service.

8. Learned counsel for the State submitted that the appellant cannot claim continuity in service from 02.01.1967 since he had left his job in Sone Bandh Higher Secondary School, Indrapuri as a new recruit in the Work Charge Establishment with the stipulation that his appointment was provisional and liable to be terminated at any point of time and such appointment was done on the basic pay in the new pay scale with no increment and the appellant accepted such condition at the time of his joining.

9. Having considered the rival contentions, we do not find any merit in the present Letters Patent Appeal. The appellant was appointed in Sone Bandh Higher Secondary School, Indrapuri under Memo No. 1634 dated 13.12.1976 subject to the following conditions:

- “1. The appointment is purely provisional and his service could be cancelled any time.*
- 2. He is being appointed on the basic pay of the new pay scale and shall not be entitled to any annual salary increment at the time of appointment.*
- 3. He is being appointed in Sone Bandh Higher Secondary School, Indrapuri as the junior most teacher.”*



It was further stipulated that if the aforesaid conditions were not acceptable to him then the appointment order would be treated to be cancelled.

10. The appellant had neither resigned nor informed the School in which he was working, i.e., Sone Bandh Middle School, Indrapuri with regard to him joining the Sone Bandh Higher Secondary School, Indrapuri and in fact had sought leave from 13.12.1978 till 12.06.1979 which was also granted. In the counter affidavit filed by the respondents, it has categorically been stated that the appellant had not resigned from his post. From perusal of the conditions of his appointment in Sone Bandh Higher Secondary School, Indrapuri it was obvious that he was paid the new pay scale in the basic grade without any annual increment which clearly means that his past service was not to be counted and the further stipulation was that if the terms were acceptable to him then he should join. The appellant having joined and not raising any objection with regard to such stipulation cannot, after his superannuation in the year 2001, claim for adding his past service from 1967 for the purposes of retiral benefits. The appellant also not informing the authorities of the Sone Bandh Middle School, Indrapuri with regard to his joining in Sone Bandh Higher Secondary School, Indrapuri nor resigning from such service clearly indicated that he had voluntarily left his service in



Sone Bandh Middle School, Indrapuri, even if the stand of the appellant is accepted that he had resigned. The counter affidavit of the respondents at paragraph 9 clearly states that in the application dated 28.09.1996, for withdrawal of G.P.F. amount, the appellant had mentioned that after giving resignation from Middle School he had joined the High School. This fact has not been controverted by the appellant in the rejoinder filed by him in the writ proceeding. Thus, the same being the admitted position, Rule 101 (a) of the Rules clearly entails forfeiture of past service. The same is quoted hereinbelow:

“101 (a) Resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.”

11. In view of the discussions made hereinabove, we do not find any error in the order passed by the learned Single Bench warranting interference. Accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/-

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