

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9930 of 2013

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1. Md. Ishaque S/O Bhonu Miyan R/O Mohalla- Makhdum, Resti Nagar,
Phulwarisharif, P.S.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

1. The Bihar School Examination Board (Senior Secondary) Budh Marg, Patna
Through Its Secretary
2. The Chairman, Bihar School Examination Board, Patna
3. The Secretary, Bihar School Examination Board, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad

For the Respondent/s : Mr. Madanjeet Singh, G.P. 20

For the B.S.E.B. Mr. Ajit Pratap Singh.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 10-08-2016

In the present case a grievance has been raised by the petitioner that he was an employee of erstwhile Bihar Intermediate Education Council. Later on the Bihar Intermediate Education Council merged with the Bihar School Examination Board and the services of the persons who were working in the Bihar Intermediate Education Council were merged with the services of the Bihar School Examination Board.

2. It has been submitted that while they were discharging the duty in the Intermediate Education Council were governed by the Bihar State Universities Act and the age of superannuation for the employees of the University has been fixed as 62 years whereas the persons discharging duty in the Bihar School

Examination Board are being governed by the provisions of the State Government and their age of superannuation is sixty years. The Bihar Intermediate Education Council has been abolished by the Bihar Intermediate Education Council (Repeal) Act, 2007 and Section 3 of the Repeal Act provided for adjustment of employees of the Bihar Intermediate Education Council which runs as follows :-

“3. Adjustment of employees of the Bihar Intermediate Education Council — (1) On and from the date of repeal of the Bihar Intermediate Education Council Act, 1992, all employees of the Council, shall remain, in employment, as if the Act has not been repealed and they shall continue to be paid same salary and allowances as was payable on the date of repeal of the Act till such time State Government has taken such final decision as is provided hereinafter.

(2) The State Government shall constitute a Committee of Secretaries consisting of three Secretaries who shall prepare a detailed scheme of absorption, retirement, compulsory retirement or voluntary retirement, screening appointment and other service conditions of employees of the Council. The scheme prepared by the Committee of Secretaries shall be placed before the Government within four months from the date of enforcement of the present Act.

Provided that it shall be open to the Government to modify, amend or suggest modifications or amendment in the scheme and the scheme thereafter shall be made operational in such form and intent as finally approved by the Government. Scheme approved by the Government shall be considered as statutory scheme framed under this Act.

(3) After the scheme approved by the Government is enforced it shall be fully implemented in its approved form and intent within three months from the date of its enforcement.

(4) The Committee of Secretaries constituted under sub-section (2) of Section 3 above shall be competent to decide utility and deployment of employees of the Council during transition period and

it shall not be open to any employee to question decision of Committee of Secretaries.

Provided that the State Government shall be competent to amend, modify, alter or substitute the scheme so framed for removal of any difficulty in its implementation.”

3. From Section 3 of the Repeal Act it appears that the service condition of the employees working in the Bihar Intermediate Education Council shall continue till a Scheme is framed by the State Government. Three men Committee was constituted by the State Government and a resolution was passed where the offending clause 8 has been inserted, which provides that the service conditions of the employees of the Bihar Intermediate Education Council will be as that of the employees of the Bihar School Examination Board.

4. A point has been raised by the petitioner that before changing the service conditions they were not heard and the post decisional hearing is nothing but a farce which will not save the offending provision from interference by this Court. In support of this proposition, learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case of H.L. Trehan & Others Vs. Hindustan Petroleum Corporation Limited reported in AIR 1989 S.C., 568 where identical situation was there and the Hon'ble Supreme Court said that there is no dispute that power lies with the State Government but that cannot be exercised without giving a

proper hearing to the person concerned as the change of condition of services is prejudicial to the interest of the parties. Learned counsel for the petitioner further submits that some of his colleagues who had superannuated before the enforcement of the resolution has superannuated at the age of 62 years whereas the present petitioner has been made to superannuate at the age of 60 years and that cannot be done without giving a fair hearing to him.

5. Learned counsel for the State has fairly submitted that the matter may be remanded back to the respondent authorities, who will take a decision after giving opportunity of hearing to the petitioner.

6. In such view of the matter, let the matter be remanded back to the Principal Secretary, Department of Education, Government of Bihar, Patna to give notice to the petitioner and after hearing him pass an order in accordance with law. In the meantime, clause 8 of the resolution with respect to the petitioner shall remain in abeyance.

(Shivaji Pandey, J)

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