

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15076 of 2015

=====

Madan Prasad, Son of Late Kanhaiya Rawat, Resident of Village Sisai, P.O. Sisai, P.S. Sahajitpur, District- Saran, retired from the post of Peon in Kapildeo High School, Sisai, Baniapur, District- Saran.

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Human Resources Department, Bailey Road, Patna.
2. The Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Saran Division, Chapra
4. The District Education Officer, Saran.
5. The Principal, Kapildeo High School cum Inter College, Sisai, Baniapur, Saran.

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. Praveen Prabhakar, Advocate
For the State	:	Mr. Anil Kumar Sinha, G.A.9

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 10-08-2016

The decision to retire the petitioner after 42 years of service under the State cannot be said to be irrational or illogical. It is based on the principle that no person would be deemed or would have been permitted to enter service at less than 18 years of age.

2. Whatever be the controversy, the petitioner managed to continue on the post and he even entered service as a minor but then those were the days of private managing committee and every unemployed or unemployable or potential employee within the family used to be hired in the school on one post or the other, i.e., before the take over by State was effected through legislation.

3. The question arises is whether the payment or salary

given to the petitioner after his superannuation ought to be taken away and recovery should be facilitated in terms of the decisions of the R.D.D.E., Chapra contained in Annexure-4 and the communication of the said decision by the principal to the petitioner by virtue of Annexure-5?

4. Learned senior counsel for the petitioner relies on two decisions. In the case of Most. Kanti Devi & Ors. vs. The State of Bihar & Ors., reported in 2003 (1) PLJR 9, it has been laid down that payment would be required to be made for the period of work even though it may not be strictly legal or valid continuance.

5. The other decision is the case of State of Punjab v. Rafiq Masih, reported in (2015) 4 SCC 334 wherein the Hon'ble Apex Court dealing with the issue of recovery has finally concluded and laid down certain parameters which shall govern issues of recovery. One of the parameters is if an employee who belongs to Class III or Class IV post, has superannuated then it may be harsh on him financially at that juncture to recover payments which was already made to him, by no contribution made by such an employee.

6. In view of the above, the order of recovery stands quashed. However, the petitioner will be treated to have superannuated on 31.08.2012 and he shall not derive any other benefit with regard to the extended period of work or service which he had

rendered which is said to be 14.08.2015.

7. Writ is allowed to the limited extent.

(Ajay Kumar Tripathi, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.08.2016
Transmission Date	