

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.212 of 2016

**Arising out of
Civil Writ Jurisdiction Case No. 9590 of 2013
Alongwith
Interlocutory Application No. 815 of 2016**

=====

Sitaram Mahto, Son of Sri Ram Jeevan Mahto, resident of village - Malmalla, P.O. - Meghaul, P.S. - Khodawandpur, District - Begusarai, retired while working as an Assistant Teacher in Govt. Middle School - Panhans, Anchal - Begusarai (North), District - Begusarai.

.... Petitioner/Appellant

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Deputy Secretary, Finance (Pay Fixation) Department, Government of Bihar, Patna.
5. The Director, Primary Education, Bihar, Patna.
6. The Regional Deputy Director of Education, Munger Division, Munger.
7. The District Magistrate, Begusarai.
8. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Begusarai.
9. The District Education Officer, Begusarai.
10. The District Programme Officer (Establishment), Begusarai.
11. The District Treasury Officer, Begusarai.
12. The District Accounts Officer, Begusarai. Respondents/Respondents

=====

Appearance :

For the Appellants : Mr. Umesh Kumar Mishra, Advocate.
For the Respondents : Mr. Vishwambhar Prasad, A.C. to A.A.G. 5.

=====

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 25-01-2017

Re.: Interlocutory Application No. 815 of 2016.

The application is for condonation of delay of 269 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.



Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No. 212 of 2016.

Heard Learned Counsel for the Appellant and Learned Counsel for the Respondents.

The present Letters Patent Appeal is directed against the order dated 18.09.2014 passed by the Learned Single Bench, in C.W.J.C No. 9590 of 2013 whereby, the claim of the appellant about graduate trained pay-scale from initial date of appointment, i.e. 20.04.1988 has been rejected on the ground of enormous delay and laches.

The brief facts leading to this Letters Patent Appeal are that the Director, Primary Education-cum-Additional Secretary, Human Resources Development Department, Patna, issued Memo No. 2568 dated 02.06.1988 for direct appointment of teachers, in Intermediate and Graduate Trained Pay-Scale, from the waiting list of graduate trained. The appointment of the appellant was made on the post of Astt. Teacher on 16.04.1988, in Intermediate Trained pay scale of Rs. 730-1080/- and he made his joining on 20.04.1988 in the Govt. Middle School Pawra, Cheriya Bariyarpur within the District of Begusarai, whereas he ought to have been appointed in Graduate Trained Pay-scale on the very date of inception of service, being the grievance of the appellant.

The appellant has been retired from service on 31.08.2010.



Earlier he had approached this Court by filing a writ petition bearing C.W.J.C No. 15784 of 2010, which was disposed of with observation to avail alternative remedy, approaching the Director, Primary Education, with regard to his claim, but he remained unsuccessful and made second attempt by filing C.W.J.C No. 9590 of 2013, which has been dismissed by the order under challenge, herein.

The Learned Counsel for the appellant submits that the appellant had been pursuing his grievances since the year 2010 but the respondents have arbitrarily rejected his claim with regard to the graduate trained pay-scale from the date of initial appointment.

The learned counsel for the State–Respondents submits that the appellant has raised his grievance for the first time, in the year 2010, the year of retirement, with regard to the grievance, which arose on the date of initial appointment i.e. 20.04.1988, therefore, the Learned Single Judge, has very rightly dismissed the writ petition on the ground of delay and laches.

Apart the rival contention of the parties, there is also an important fact relating to the issue, as contended in paragraphs 6 & 7 of the Counter Affidavit, filed by the Respondent Nos. 9 & 10 before the Learned Single Bench, which reads thus :

“ 6. That it submitted that later on vide Memo No. 2573 dated 03.06.1988 (Annexure – 10) guideline had been issued by the Director, Primary Education, stating that from the teachers already working, direct appointment in Graduate trained/intermediate



trained scale be made to only such Teachers who in writing consents for the same.

“7. That in pursuance of the said guideline dated 03.06.1988, no written consent has been given by the petitioner, neither that consent given, if any, has been brought on record by the petitioner in the present case rather on the other hand, the petitioner is accepting his initial appointment on 16.04.1988, made on Intermediate Trained Scale, had continued with the same as has finally superannuated”.

The appellant has not controverted the facts, stated in paragraph nos. 6 & 7 of counter affidavit of the respondent nos. 9 & 10 as referred above.

Considering the fact that the appellant had not given written consent to the District Superintendent of Education, Begusarai, for his appointment as graduate Trained Teacher in terms the Memo No. 2573 dated 03.06.1988, as also, the delay and laches on his part, we find no valid reason to interfere in the order of the Learned Single Bench.

Therefore, accordingly, this Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2017.
Transmission Date	

