

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1219 of 2012

In
Civil Writ Jurisdiction Case No.1651 of 2009

-
1. The State Of Bihar
 2. The Secretary Human Resource Development Department,
Government Of Bihar, Patna
 3. The Director, Secondary Education, Government Of Bihar, Patna
 4. The District Education Officer, Patna
 5. The Regional Deputy Director Of Education, Patna Division,
Patna
 6. The Head Master Naveen Adarsh Uchch Vidyalaya, Ashok
Nagar, Road No. 5, Kankarbagh, Patna-20

... .. Appellant/s

Versus

Harishankar Pandey S/O Late Mahavir Pandey R/O R/O Mohalla- Bhagwan
Road, Gaya Line, Mithapur, Patna-01

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Sunil Kumar Singh, Adv. Mr. Ranvijay Singh, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-12-2017

This appeal has been filed by the State Government challenging the grant of pensionary benefit to the respondent employee. The respondent employee was working in a private institute which was partly recognized on 15.1.1970 and



on 16.11.1970, it was granted conditional recognition. The petitioner was appointed by the Managing Committee of the school on 2.1.1969. A dispute arose between the teachers of the school. Two groups started claiming right to management of the school and as a consequence thereof, nothing happened. However, after the Bihar School Non-Government Secondary School Taking Over of School Management Act, 1981 came into force, the school in question was also taken over by the State Government some time in the year 1988. Thereafter, petitioner's services were recognized in the school only with effect from 6.10.1994. When the petitioner retired from service in the year 2001, he filed a writ petition and claimed counting of his services right from the initial date of appointment in the year 1969 for grant of pensionary benefits. When this was not done, he approached this Court in C.W.J.C. No.13827 of 2005 and a Bench of this Court found that once the petitioner accepted the order passed in the year 1994, i.e. on 6.4.1994, he cannot, without challenging the said order, claim counting of his service right from 2.1.1969. Taking note of the aforesaid, the petition was disposed of in the following manner:

" Prima facie the reasoning given by the Director, Secondary Education, Government of Bihar, in his communication dated 14.9.2006 contained in annexure-C to the counter affidavit does not suffer from



any legal vice. Unless the petitioner succeeds in getting annexure-4 set aside from appropriate forum he cannot be allowed the benefit of pension as claimed by him in the present writ application."

The first and foremost argument of the learned counsel appearing for the State is that in view of this order the petitioner now after such a long period of time, i.e. more than 15 years of his retirement, cannot claim any benefit. That apart, it is argued by the learned Counsel that once the petitioner's school was taken over in the year 1988 and when the petitioner was only granted approval and recognition with effect from 6.10.1994, the petitioner cannot claim any further benefit in the matter.

As far as the question of *res judicata* is concerned, we find that the learned Writ Court did observe that without challenging the order dated 6.10.1994, no relief can be granted to the petitioner. As the matter pertains to pension of an employee, even if in specific terms there is no order granting liberty to the petitioner, the order passed by the learned Writ Court goes to suggest that the learned Writ Court did not interfere into the matter because the order dated 6.10.1994 was not challenged and the implication of the order would be that the petitioner should first challenge the order and thereafter claim



relief. This, in our considered view, cannot be treated as *res judicata*. That apart, when the matter was re-considered by the learned Writ Court in the present writ petition, from the detailed order passed by the learned Writ Court, we find that the learned Writ Court, on the basis of document and material that came on record, came to the conclusion that there are sufficient evidence available on record right from 1988 to show that the petitioner was working in the institute in the year 1988. There are evidence to show that he was made Head Master of the school in 1991 and even though the notification is issued in the year 1994, considering the fact that school came under the control of the State Government in the year 1988 and at that time the petitioner was already working, the learned Writ Court has only held that the petitioner should be deemed to have been working since 1988 only for the purpose of granting him pension and retiral benefit and not for anything like salary or other such benefits.

The order passed by the learned Writ Court reads as under:

"On perusal of the impugned order passed by the Director, Secondary Education, I find that in the last paragraph of order, it has been mentioned that in the year 1988, a decision had been taken by the Board to run this School at a different place. At that time also, petitioner was working in this very School. On perusal of the records there are sufficient evidence to show that petitioner started discharging the duties of Incharge Headmaster since the year



1988.

Considering this finding, I come to this conclusion that there are sufficient evidence of this fact that right from 1988, petitioner was working in this School, which came under the control of the State Government. There is evidence that in the year 1991, he was working as Headmaster of the School. In this circumstance, there was no reason for recognizing his service with effect from the date of notification issued in the year 1994. Petitioner should not have been deprived of the benefits for which he became entitled on account of the School coming under the control of State with effect from 1988. For the reasons, stated above, I find that the impugned order holding petitioner, not entitled for pension and pensionary benefits, is not sustainable. Petitioner's service should have been recognized with effect from 1988. Since the petitioner has already superannuated, even if his service is recognized with effect from 1988, he will not be entitled for any arrears of salary, but this period will be counted only for the purpose of pension/pensionary benefits."

Even though learned counsel appearing for the State has vehemently argued that the petitioner is not entitled to any relief and if such relief is granted to the petitioner, various other persons would be claiming similar benefit, we are of the considered view that the aforesaid contention of the learned Government Advocate is not correct. It is a case where based on the peculiar facts and circumstances of the case, as indicated hereinabove, in the case of present petitioner only, certain benefits have been granted and, therefore, the said case and the judgment cannot be treated and will not be treated as a



precedent. It is a case where the school in question was taken over in 1988, the evidence to show that the petitioner worked since 1988 and if treating him to be working from 1988, the only direction is to count his service from 1988 for the purpose of calculating the period for determining qualifying service, we see no error in the order warranting re-consideration.

As far as the delay and laches on the part of the petitioner is concerned, when the question of grant of pensionary benefit to a retired employee is concerned, due to denial of his pensionary benefit, cause of action recurs every month as every month he is deprived of a legal right. It is a continuing and recurring cause of action in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Tarsem Singh, (2008) 8 SCC 648. The claim of the petitioner should not be rejected only on the ground of delay and laches particularly when the learned Writ Court has restricted grant of benefit only with regard to pension and has denied salary and other monetary benefit right from the year 1988. It is a reasoned and speaking order passed by the learned Writ Court in the peculiar facts and circumstances of the case and we are not inclined to interfere into the same.



With the aforesaid findings and observations, this
appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.12.2017
Transmission Date	

