

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No. 190 of 2011

In
Civil Writ Jurisdiction Case No.12238 of 2003

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Md. Ilias S/o Late Barhu Hussain at Present Residing at Mohalla Mahalpur, Biharsharif, P.S. Biharsharif, Distt. Nalanda, now a retired Headmaster From M.G.A. High School, Babhanbigha, Sheikhpura, District Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Education Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar, New Secretariat, Patna.
2. The District Secondary Education, H.R.D. Department, Government of Bihar, New Secretariat, Patna.
3. The District Primary Education, H.R.D. Department, Govt. of Bihar, New Secretariat, Patna.
4. The Accountant General, Bihar, Patna.
5. District Education Officer, Sheikhpura.
6. District Superintendent of Education, Biharsharif, District Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. Azimul Haque, Adv.

For the Respondent/s: Mr. Kinkar Kumar, SC-9

: Mr. R.K. Sharma, Adv.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date : 09-08-2017

Heard learned counsel for the petitioner and the State.

Perused the records of this case.

This application has been filed for review of judgment/order dated 24.09.2010 passed in CWJC No. 12238 of 2003 by a learned Single Judge of this Court as the writ petition was dismissed even though none had appeared on behalf of the



petitioner, assailing the aforesaid decision by filing LPA No. 796 of 2011 which was disposed of on 10.05.2011 with liberty to the petitioner to file a review petition and, as such, this review petition has been filed by the petitioner.

The petitioner had filed CWJC No. 12238 of 2003 assailing the order dated 31.08.2001 passed by the respondents refusing to take into account the past services rendered by him for the period 27.03.1953 to 06.07.1963 as qualifying period for grant of pension stating that during the said period he was working as a teacher in different middle schools and, as such, the said period should be clubbed and considered as the services rendered by him for the purpose of grant of pension. However, the learned Single Judge has opined that the computation of qualifying pension has to be in terms of the Government decision whereas a categorical finding has been recorded by the authority in between 27.03.1953 to 06.07.1963 that the petitioner was working either in unrecognized school or school under the control of Zila Parishad, therefore, he cannot claim benefit of continuous service for the purpose of payment of pension. That decision itself was under-challenge.



Learned counsel for the petitioner tried to impress upon this Court that the said schools were not unrecognized rather they were recognized.

Now, the question before this Court would be as to whether that question is still open to be considered by this Court and decided?

The answer has to be meted out from the supplementary affidavit filed on behalf of the petitioner as it appears that petitioner filed CWJC No. 2564 of 1999 for redressal of identical grievance but the same was dismissed on 25.11.1999 by a learned Single Judge of this Court vide Annexure-3 to the supplementary affidavit holding that such past services cannot be considered for computation of the period for payment of pension.

However, it is contended by the petitioner that he could not raise the ground that in fact he was serving during such period in recognized institution.

Such submission raised on behalf of the petitioner is noted only to be rejected as the petitioner assailed the aforesaid judgment in LPA No. 1664 of 1999 which was dismissed on 10.05.2000, as contained in Annexure-4 considering that it is admitted fact that petitioner was a teacher in Middle School from 23.07.1953 to 06.07.1963 which was an unrecognized school,



thereafter, the school of the petitioner was recognized in 1964 and he continued in service and superannuated on 31.01.1996. Thus, the authority has counted 32 ½ years of his service for the purpose of pension excluding the period when he was in unrecognized school. Eventually, the judgment delivered by the learned Single Judge was affirmed.

In my considered view, if once the matter travelled up to the Division Bench and the petitioner could not succeed there, the option is left before him was either to file review of such judgment or to move before the Apex Court. Even if, for the time being, it is assumed that petitioner's assertion is correct, the single Bench does not have any authority to correct or modify any decision rendered by a Division Bench. That apart, in my view, there is nothing on record to show that petitioner's such assertion is correct.

Accordingly, this review petition is dismissed.

(Dr. Ravi Ranjan, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	NA
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