

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.111 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 18600 of 2012
Along with
Interlocutory Application No.434 of 2016**

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Yubraj Prasad Yadav, S/o Late Garhoo Prasad Yadav, resident of Madhepura, P.S. Madhepura, District - Madhepura, a retired Reader, department of English, T.P. College, Madhepura and Ex-Dean, Students Welfare, B.N. Mandal University, Madhepura.

.... Petitioner- Appellant

Versus

1. The State of Bihar.
2. The Secretary, Higher Education, Government of Bihar, Patna.
3. The Deputy Secretary, High Education, Government of Bihar, Patna.
4. The Vice-Chancellor, B.N. Mandal University, Madhepura, District - Madhepura.
5. The Registrar, B.N. Mandal University, Madhepura, District - Madhepura.

.... Respondents-Respondents

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Appearance :

For the Appellant : M/S. Gajendra Kr. Jha and Bam Bahadur Jha, Advocates.
For the State : Mr. Priyadarshi Matevi Saran, Advocate.
For the University : Mr. Mithilesh Kr. Rai, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 23-01-2017

Re.: Interlocutory Application No. 434 of 2016:

The application is for condonation of delay of 15 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that sufficient cause is made out the 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. 111 of 2016.

The challenge in the present Letters Patent Appeal is to an order passed by the Learned Single Bench on 09.10.2015 whereby, the claim of the appellant for pension after considering the services rendered by him in T.P. Collegiate School, Madhepura, remained unsuccessful.

The appellant is stated to have joined in T.P. Collegiate, School, Madhepura, on 25.06.1958. Learned Counsel for the appellant states that T.P. Collegiate School was privately managed, but in the year 1962, the pension scheme was made applicable to that school. Thereafter, he joined in the T. P. College on 22.04.1977. The said College became constituent College in the year 1976. Now the appellant claims that he should be given benefit of the period of the services rendered by him in T.P. Collegiate School, Madhepura towards the pensionary benefits by the College. He relies upon Clause (ii) of Section 5 of the “Statutes For The Grant Retiral to the Benefits Employees of the Bihar/Ranchi/ Bhagalpur/ Magadh/ L.N.Mithila/ K. S. D Sanskrit University” approved by the Chancellor on 18.11.1980. The said provision reads as under:

5(ii) Transfer of an employee from service of Government of Bihar to the service of the University.



“Employee joining the University after continuous service in the Government on a permanent post or temporary post subsequently made permanent for a minimum period of five years shall in the event of permanent absorption in the University, be allowed if the employee so wishes, retirement benefit in respect of the past continuous service rendered in the Government provided that the transfer is in the public interest and provided that he has not availed of retirement benefits in the Government.

All transferred Govt. Servants, who have resigned or retired from, Govt. Service and have been absorbed in the service of the University without any break, shall be entitled to pension and gratuity from the University on the basis of their total qualifying service rendered under the Govt. and the University provided they refund to the University the pension and gratuity received by them for service rendered under the Govt. In case they do not chose to count their former State Govt. service for drawal of pension/gratuity from the University, they will be entitled to the benefits of C. P. Fund only for the period of the University service.”

Learned Single Bench dismissed the writ application finding that the benefit of Clause (ii) of Section 5 of the aforesaid Statutes relating to the pension cannot be extended to the appellant as he is not covered by the conditions mentioned therein as he was appointed afresh in the year 1977, pursuant to the recommendation from the Bihar Public Service Commission.

We do not find any error in the findings of the Learned Single Bench. The appellant was an employee in a privately managed School though the pension scheme was given to the permanently



appointed employees in the year 1962. Clause 5(ii) permits the counting of previous service which was under the Government. The grant of pension to the teachers of the private School will not make a private School as the Government School. Therefore, the service rendered by an employee in the privately managed School cannot be counted for the purpose of pension after appointment in the University. Thus, the appellant is not entitled for counting the services rendered by him in the privately managed school.

We do not find any merit in the Letters Patent Appeal. Consequently, the Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-Amit.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02.02.2017.
Transmission Date	

