

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1135 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 474 of 2014

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Ram Padarath Rai Son of late Sri Harihar Rai Resident of Village-
MirjaPur, PS Bharpura, Via- Sonepur, P.S. Sonepur, District Saran.

.... (Petitioner) Appellant

Versus

1. The State of Bihar

2. The Principal Secretary, Department of Education, Government of Bihar
Patna.

3. The Director, Secondary Education, Department of Education
Government of Bihar, Patna

4. The District Education Officer, Vaishali, Hajipur.

5. The Accountant General, Bihar Birchand Patel Path, Patna.

.... (Respondents) Respondents

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Appearance:

For the Appellant/s : Mr. Najmul Hoda, Advocate.

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 17-04-2017 Seeking exception to an order dated 30.01.2016

denying the benefit of counting of service rendered by the
petitioner in the Primary School towards regular service for
pensionary benefit, appellant filed the Writ Petition and the
learned Writ Court finding that the petitioner did not submit his
option within two years from the date of issuance of the Circular
inviting options dismissed the Writ Petition.

Learned counsel for the petitioner, during the course
of hearing, invited our attention to Annexure 'E' filed along with
the Counter Affidavit of the State Government in the original Writ



Petition and pointed out that by this Circular (Annexure 'E'), which was published in the daily newspaper on 03.08.2011, the period of two years fixed originally in the Circular dated 01.06.2005 was extended by two years and as the petitioner had submitted his option on 05.03.2013, i.e., within two years from the date of notification of the Circular (Annexure 'E') on 03.08.2011, it was argued that the learned Writ Court has committed an error in doing so. Accordingly, prayer for intervention is made.

On a consideration of the submissions made by the learned Senior Counsel as is canvassed before us, it looks very attractive tempting us to allow the Writ Petition of a retired person. However, on going through the facts in detail and the speaking order passed by the Director (Secondary Education), Bihar, Patna, as is contained in Annexure 'B' to the Counter Affidavit filed on behalf of the respondent no. 3, we find that with a view to grant benefit of counting of the past service, initially the Circular bearing no. 1191 dated 01.06.2005 was issued and in this Circular it was indicated that such persons who are desirous to claim benefit of the past services rendered by them in another department, may give options subject to fulfilling of certain conditions and their cases may be considered for counting of their past services. However, one of the stipulations in this Circular



dated 01.06.2005 was that the option had to be given within two years. Admittedly, within two years of the issuance of the Circular dated 01.06.2005 the petitioner did not submit any option. However, it seems that many employees, who could not submit their options, and officials of various Employees Association represented to the State Government and thereafter the State Government issued another Circular on 25.07.2011 bearing no. 1792/V (Annexure 'A'). In this Circular dated 25.07.2011 which is available on record of the Writ Petition, it was stipulated, that such of the employees, who could not submit their options within two years of issuance of the Circular dated 01.06.2005 can do so now on or before 31.12.2011, and if that is done, it would be presumed that they have submitted their options within two years of issuance of the Circular dated 01.06.2005 and process could be initiated for considering their claims. Accordingly, on a reading of the Circular dated 25.07.2011, which was published in the daily newspaper on 03.08.2011 vide Annexure 'E', what transpires is that if such of the employees who could not submit their options within two years of issuance of the Circular dated 01.06.2005, for them by way of a one time exception, time to submit their options on or before 31.12.2011 was permitted. This Circular does not carry any meaning as is canvassed by the petitioner before us. It is



not a Circular which extends the period of submitting the option after two years of issuance of the Circular dated 03.08.2011. On the contrary, it is a Circular in context to the earlier Circular dated 01.06.2005 granting one time exception to the employees to submit their options on or before 31.12.2011. The petitioner in pursuance to this Circular dated 03.08.2011 did not submit his option on or before 31.12.2011. On the contrary, the petitioner did not do anything till attaining the age of superannuation, i.e. 31.12.2012; again kept quite for more than three years and then submitted his option on 05.03.2013, i.e. much after 31.12.2011.

Taking note of these circumstances and the fact that the petitioner did not submit his option within the stipulated period, i.e. on or before 31.12.2011, if the respondents have rejected the claim and the learned Writ Court has upheld the order dated 26.11.2014 passed by the Director (Secondary Education) in the Writ Petition, we see no error in the order passed by the learned Writ Court warranting reconsideration. The appeal being devoid of substance is accordingly rejected.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Dilip, AR

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