

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15706 of 2014

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Tap Nath Ram S/o Late Barmeshwar Ram R/o Sultanpur, P.O. - Sultanpur, Via
- Maniar, P.S. : - Bashdih, District - Balia (U.P.) at present working as the
Headmaster Ram Gobind Singh High School, Parsa, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, HRD, Deptt. Govt. of Bihar, Patna.
2. The Director, Secondary Education, Govt. of Bihar, Patna.
3. The District Education Officer, District Siwan.
4. The Headmaster, Nationalised Practical High School, Sikatia, (Maharajganj), District - Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghav Prasad No.-1
For the Respondent/s : Ms. Prakritita Sharma AC to SC -25

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 06-08-2018

Heard Mr. Raghav Prasad, learned counsel for the
petitioner and learned counsel appearing on behalf of the State.

2. The grievance of the petitioner in present writ petition is
payment of arrears of salary from April 1991 to March 2003.
Petitioner has calculated that amount as eleven lacs and prayer is
made also to take over of school by the government from an earlier
date; the Court failed to understand when the school was taken
over in March 2003, how the writ petition filed for grant of relief
like takeover of the school from the date anterior to the takeover
can be entertained. In the present proceeding the petitioner has
raised grievance as to payment of arrears of salary prior to the
takeover i.e. April 1991 to March 2003. The learned counsel



appearing on behalf of the petitioner has drawn attention to this Court to the different orders passed by this Court and the authority.

3. Mr. Raghav Prasad, learned counsel for the petitioner has drawn attention to Annexure-2 and submits that direction was issued by this Court for grant in aid to the institution. The relevant part of the order is quoted below:-

“authorities concerned were directed to issue a show cause notice as to why the notification declaring the school as a minority institution be not cancelled and withdrawn. It was directed that the authorities concerned shall pass appropriate order after considering the show-cause, if filed, in accordance with law.

In Supplementary affidavit filed in the present case on behalf of the petitioners. It has been stated that matter is still pending before the concerned authorities, even though the judgment was passed by this Court on 13th of August, 1987.

Mr. Shukla, learned counsel appearing on behalf of the petitioners states that the matter has been fixed on the 14th October, 1988. On the last occasion, when the matter came up before me, Mr. Shukla was directed to take necessary instruction specially with regard to the statements made in paragraph-7 of the supplementary affidavit. It is surprising that the matter has taken a long time and has not been disposed of uptill now. Learned counsel for the petitioner further states that in the while all the grants-in-aid to which



this institution is entitled has been stopped and the teaching and the non-teaching staff of this school are suffer one great hardship.

In the facts and circumstances of this case and after hearing learned counsel appearing on behalf of the parties, I direct the respondents authorities to released the grants-in-aid to the Managing Committee of the Nationalized Practical High School, Sikatia, with effect from September, 1988 until the matter is finally decided by the concerned authorities in terms of the direction made in C.W.J.C. No. 504 of 1981 and 1145 of 1981. In other words the authorities shall continue to release the grants-in-aid in favour of this Institution from September onwards. They are once again directed to dispose of the matter as soon as possible and it is hope that the petitioner of this case and the petitioners of C.W.J.C. No. 504 of 1981 and 1145 of 1981 shall cooperates in the matter. If they do not cooperate in the disposal of this matter by the concerned authorities. It will be open to the authorities concerned to dispose of this matter after giving one final notice to the concerned petitioners.

With the above observation, this application is disposed of.”

4. On the strength of the aforesaid order Mr. Raghav Prasad submits that this Court has granted relief in the nature of payment to the institution where the petitioner was working and as such it



was the obligation of the state to ensure payment in the light of the direction of this Court contained in Annexure-2.

5. He has also drawn the attention to the Court to the order passed by this Court in contempt jurisdiction Annexure-5 'A' and Annexure-5 'B' which is quoted below for ready reference:-

ANNEXURE 5 A

“In view of the Annexure-E to the third supplementary show cause filed on behalf of Opposite party No.5, District Education Officer, Siwan and the order dated 17.11.2003 passed by the then Secretary, Secondary Education; annexed as Annexure-A to the supplementary show cause filed on behalf of the Secretary, Secondary Education, Bihar, Patna, learned Senior Counsel for the petitioner does not want to press this contempt application and seeks permission to withdraw the same.

Therefore, the contempt application is dismissed as withdrawn.

The appearance of opposite parties no.2 and 3 are dispensed with.

However, grievances have been raised by some intervenor teachers that the teaching and non-teaching of the Institution, whose appointments have been found to be genuine, are still not being paid their salary. If that is so, they will be at liberty to raise their



claims before the appropriate authority in accordance with law.

In that view of the matter, I.A application filed by them are disposed of.”

ANNEXURE 5 B

“This application has been filed for modification of order dated 16.11.2009 passed in M.J.C. No. 1683 of 2000. In last paragraph on first page the intervener were given opportunity to raise the grievances with regard to payment of salary.

It is made clear that said expression will include arrears of salary also.

The modification application is accordingly disposed of.”

6. On the basis of the observation of the Contempt Court while disposing the contempt proceeding as dismissed as withdrawn, Mr. Raghav Prasad, learned counsel for the petitioner submits that the petitioner has acquired right to payment of arrears of payment in the light of the order passed by the Contempt Court. He submits that it is the duty of State to ensure arrears of payment to the petitioner and others in the light of the judgment of this Court contained in Annexure-2 and observation in Annexure-5 'A' and Annexure-5 'B' and as such petitioner deserve relief in the present proceeding.



7. On behalf of the respondents stand was taken with reference to the order passed by this Court in C.W.J.C. No. 18507 of 2008 dated 02.04.2012 where this petitioner claim for counting his past service w.e.f 1985 as Assistant Teacher and Headmaster w.e.f. 1987 was rejected by this Court. The relevant part of the discussion of C.W.J.C. No. 18507 of 2008 reads as follows:-

“ In that view of the matter, this Court would find no justifiable reason to allow the prayer of the petitioner for counting his services as a Government servant in capacity of teacher of the school with effect from 10.5.1985 and as a Headmaster of the school with effect from 10.11.1987. This Court also does not find any flaw in the impugned order dated 10.1.2005 whereby and whereunder the services of the petitioner as a Headmaster of the school along with ten other teaching and non-teaching employees have been taken over only with effect from 17.11.2003, the date on which the school became the Government school. The reliance placed by the learned counsel for the petitioner on a notification issued by the Director, Secondary Education on 17.11.2003 as with regard to the implementation of the order of the Secretary of Secondary Education taken away minority status and declaring the school as a Government school from the date of the order i.e. 17.11.2003 can also not be read in the manner as suggested by the learned counsel for the petitioner in view of content of the



order passed by the Secretary of the Department as contained in Annexure-5 to the writ application, contained in Memo No. 755 (Vidhi) dated 17.11.2003, relevant portion whereof being paragraphs 23 to 25 have already been extracted above. Any order issued by the Director contrary to the terms of the order of the Secretary of the Department passed in compliance of the directions given by this Court in the judgment dated 13.8.1987 cannot bind the State Government when the fact remains admitted that the school was ultimately taken over by a notification dated 10.1.2005 with effect from 17.11.2003 as directed by the Department Secretary in his order dated 17.11.2003.

In the light of the aforementioned discussions this Court will have no difficulty in holding that the question of payment of salary or protection of pay or counting of earlier services of the petitioner prior to take over of the school i.e. 17.11.2003 is simply impermissible either on the fact or in law. The petitioner was an employee of a private school with minority status from the date of his appointment as a teacher with effect from 10.5.1985 and as a headmaster with effect from 10.11.1987 and his any right of being a Government servant can commence only with effect from 17.11.2003 when the school was taken over as a Government school. It is this aspect which has been notified by the Director, Secondary Education in the office order contained in Memo No. 45 dated 10.1.2005 while giving



recognition to the services of teaching and non-teaching employee of the school including the petitioner with effect from 17.11.2003, as contained in Annexure-7, and the petitioner is not entitled for any amendment in the said notification dated 10.1.2005.”

8. Considering the totality of the fact situation the Court finds that the claim of petitioner pertains to the period prior to takeover of the school and the direction contained in Annexure-2 is for grant in aid to the institution, Mr. Raghav Prasad admits that certain payment was made by the managing committee but the petitioner was not paid the entire arrears in the light of Annexure-2. In the matter of payment of salary to a teacher in privately managed school the obligation is primarily against the managing committee. Mr. Raghav Prasad has submitted that the managing committee was not in existence and as such state was/is obliged make payment of arrears. It is to be noted here that grant-in-aid are released to the managing committee and in terms of Annexure -2 State was required to provide grant-in-aid to the managing committee. There was no obligation on the state to directly make payment to teaching and non-teaching employee in of the school in question. The observation of the contempt Court after the withdrawal of the contempt proceeding cannot be construed as direction for payment of salary to the petitioner by the respondents



state as the law in this regard is settled by a catena of judgment of the Apex Court whereby it has categorically held that no fresh direction can be issued in contempt proceeding. Reference in this connection be made to the Judgment of Apex Court in (2006) 1 SCC 613 and the SCC (2014) 3 SCC 373. In addition thereto in the matter of payment of salary the Apex Court has categorically held out that the Court cannot issue direction for payment of monetary claim prior to three years from the date of filing of the writ petition or three years from the date of raising claim whichever is later. Reference in this connection may be made to the judgment of the Apex Court in the case of Union of India Vs. Tarsem Singh, (2008) 8 SCC 648, paras 7 and 8 of which is quoted below for ready reference:-

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if



such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ



petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”

9. Mr. Raghav Prasad submitted with reference to Annexure-7 which was issued in response the direction of the director secondary education by the District Education Officer, the petitioner has acquired legitimate right for payment of salary in the light of Annexure-7.

12. Mr. Raghav Prasad lastly submits that after takeover of the school the assets and liability of the managing committee stands transferred to the State Government as such the state is obliged to make payment of arrears to the petitioner for the period prior to takeover, such submission are noted to be rejected as the liability cannot be extended to non-payment of alleged amount received as grant-in-aid for the period. Particularly when counting of service prior to takeover was rejected in C.W.J.C. No. 18507 of 2008.

13. In view of the discussion made above, the Court does not find any merit in this writ petition as it is accordingly dismissed.

banti/-T.Kr.

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2018
Transmission Date	

