

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11645 of 2014

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Madan Prasad, son of late Raghunath Prasad, resident of village + Police Station -
Madhwapur, District - Madhubani. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
 2. The Director, Secondary Education, Education Department, Govt. of Bihar,
Patna.
 3. The District Education Officer, Madhubani. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Ram Sagar Singh, Advocate

For the Respondent/s : Mr. Manish Kumar, GP-4

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 18-09-2018

Heard learned counsel for the petitioner and State.

2. The claim of the petitioner for recognition of service in the Project School was earlier rejected by the Director Secondary Education vide order dated 22.07.2008 (Annexure-3) and the order dated 20.04.2010 (Annexure-4) on the ground that petitioner was over age.

3. The petitioner filed C.W.J.C. No. 2551 of 2011 and this Court vide order dated 10.05.2012 allowed the writ application and directed the respondents to pass appropriate order for regularizing the services of the petitioner within a period of three months.

4. After the order of the Writ Court dated 10.05.2012, the respondents have passed the order dated 01.10.2012, as contained in Annexure-7,, whereby report was called for from the Regional Deputy Director of Education, Darbhanga Division, Darbhanga about



the continuity of service of the petitioner from 11.01.1989 indicating therein that in case, if it is found that the claim of continuity of service is incorrect, action shall be taken for cancelling the recognition of the service of petitioner and for appropriate legal action.

5. Subsequently, vide Annexure-9, the respondents passed order on 18.02.2015 i.e. three years after Annexure-7, whereby recognition granted by Annexure-7 was cancelled on the ground of lack of continuity of service of the petitioner relying upon the report of Regional Deputy Director of Education, Darbhanga Division, Darbhanga. The report of Regional Deputy Director of Education, Darbhanga Division, Darbhanga is based on the attendance register of the school.

6. Learned counsel appearing on behalf of petitioner has filed rejoinder to the counter affidavit. Referring to the rejoinder to the counter affidavit, particularly, para 6 to 8 he has clarified that the report of the Regional Deputy Director of Education, Darbhanga Division, Darbhanga on the basis of the attendance register is totally misconceived. Referring to the instance of Devendra Prasad Sah, he submits that the petitioner and Devendra Prasad Sah have put their signatures on the same attendance register and in the case of Devendra Prasad Sah original record/attendance register was considered and the respondents have admitted the continuous service of Devendra Prasad



Sah and he was granted the benefit of recognition on the basis of continuous service, but in the case of the petitioner the respondents have simply disbelieve the continuity in service on the ground that his name does not figure in the attendance register. Para. 6 to 8 to the rejoinder to the counter is quoted herein below:

“6. That, one Devendra Prasad Sah, the clerk of the same school, whose service was recognized vide office order as contained in memo no. 288P dated 03.08.2012 with effect from 01.01.1989. He was superannuated from the service on 31.01.2012, but like the present petitioner he was also not being paid arrears of salary as well as his retiral dues. He filed C.W.J.C. No. 15006 of 2013 for payment of arrears of salary as well as retirement benefits. In the case of Devendra Prasad Sah also it was alleged that from 01.07.1998 to 01.07.2008 the Teacher’s Attendance Register was not available and for the said reason arrears of salary of Devendra Prasad Sah was not being paid.

7. That, vide order dated 31.01.2014 the respondent no. 2 and 3 was directed to appear in person before this Hon’ble High Court on 11.02.2014 in the case of Devendra Prasad Sah and thereafter, on 11.02.2014 a show cause on behalf of the respondent no. 3 was filed. From perusal of the said show cause it appears that the Teacher’s Attendance Register from 01.07.1991 to 01.07.2008 was not available in the case of Devendra Prasad Sah also, but after the order of



personal appearance of the respondent no. 2 and 3 the arrears of salary of Devendra Prasad Sah amounting Rs. 18,28,045/- was sanctioned vide memo no. 16 dated 18.02.2014 by the Drawing and Disbursing Officer.

8. That, it is relevant to point out here that in the year 1998 Teacher's Attendance Register of recognized teachers and non-teaching staff of the school and unrecognized teachers and non-teaching staff of the school were separated. The present petitioner and Shri Devendra Prasad Sah both were unrecognized and, as such, both were marking attendance in the same register. The service of Devendra Prasad Sah was recognized on 24.06.2008 and thereafter, he was started to make his attendance in register of recognized teachers and non-teaching staff of the school and perhaps, the Teacher's Attendance Register of unrecognized teachers and non-teaching staff of the School is not available. Therefore, the Teacher's Attendance Register in case of Devendra Prasad Sah was not available for the period 01.07.1998 to 01.07.2008 and in case of the present petitioner for the period from 01.07.1998 to 31.07.2009. In this regard the case of the present petitioner and Devendra Prasad Sah is exactly same, but the present petitioner has been treated different from Devendra Prasad Sah."

7. It is noted here that in view of the dispute as to the continuity of service in the school in question right from 1998, the claim of the petitioner was rejected.



8. From the materials available on record, the Court finds that the respondents have changed their stand from Annexures- 3 and 4, which would manifest that earlier the claim of the petitioner was rejected on the ground of over age and when the matter was remitted before the authorities after order dated 10.05.2012 in CWJC No. 2551 of 2011, as the over age was not a permissible ground to reject recognition of service in view of the judgment of the Full Bench, then the respondents took a different view and while granting recognition a condition was incorporated that it would abide by the final report of the enquiry of the Regional Deputy Director of Education, Darbhanga Division, Darbhanga about the continuity in service. After three years of such decision, the recognition of the services of the petitioner was cancelled on the ground that the attendance register of the relevant period does not support the case of the petitioner about continuous service. The aforesaid action of the respondents creates doubt about the bonafide action, particularly, in the light of the show-cause in C.W.J.C. No.15006 of 2013 in the case of Devendra Prasad Sah (Annexure-10).

9. Considering the averments made in para 6 to 8 of the rejoinder filed by the petitioner, which is quoted herein above, the matter is remitted to the Director, Secondary Education, who shall grant personal opportunity of hearing to the petitioner and pass



appropriate order afresh on the question of continuity of service and if it is found that the attendance register, which was the basis for consideration of grant of recognition of service of Devendra Prasad Sah bears petitioner's signature, then the petitioner's case should also be considered on the same line like Devendra Prasad Sah. Necessary decision in this regard after personal hearing to the petitioner and verification of same attendance register which was the basis of grant of recognition of service of Devendra Prasad Sah must be taken within a maximum period of four months from the date of receipt/production of a copy of this order.

10. The respondent Director, Secondary Education is also directed to pass fresh order after perusal of the order, which was the basis for grant of recognition to Devendra Prasad Sah, a teacher, of the same school.

11. In view of the above, the order as contained in Annexure-9 cannot sustain and it is accordingly, quashed.

12. With the aforesaid, the writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2018
Transmission Date	

