

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8279 of 2004

=====

Manish Kumar Upadhyaya son of late Sugandh Upadhyay resident of
Mohalla West Lakshmi Nagar P.S. Ram Krishna Nagar Patna 27

.... Petitioner/s

Versus

1. The Bihar School Exam Board Patna through its Chairman-cum- Administrator.
2. The Secretary, Bihar School Examination Board, Patna

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Mishra, Advocate

For the Respondent/s : Mr. J.P.Shukla, Advocate

Mr. Namrata Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 20-02-2018

Re. Interlocutory Application No. 1420 of 2018

Interlocutory Application has been filed by the son of the petitioner namely, Manish Kumar Upadhyay for substitution of original writ petitioner namely, Sugandh Upadhyay.

2. It is submitted that the original writ petitioner passed away on 07.05.2013. In support of the said submissions, a death certificate dated 05.06.2013 has been placed on record by filing Interlocutory Application no. 1420 of 2018. The petitioner claiming to be the only son and legal heirs of the petitioner has prayed for substitution in place of the original writ petitioner.

3. The said prayer is not objected by the respondent Board.



4. Let the name of the original writ petitioner be expunged and in his place name of Manish Kumar Upadhyay son of late Sugandh Upadhyay be substituted in the records of the writ petition.

5. The Interlocutory application stands allowed and the matter is being considered for disposal of the case at the stage of admission.

Re. Civil Writ Jurisdiction Case No. 8279 of 2004

6. Heard counsel for the petitioner and the respondents.

7. It appears from Annexure F of the counter affidavit that even though charges against the petitioner of misbehaving in drunken state and of taking money of Rs. 200/- from some students for some favour has been proved but taking humanitarian stand and in view of the undertaking given by the petitioner that he would not commit such mistake in future, the respondents have decided that the petitioner would be allowed to submit his joining and resume his duties.

8. By order dated 28.08.2002, a decision has been taken that the petitioner would not be entitled to any salary for the period 12.05.2001 to 28.08.2002 and also that the entire period will be reckoned for computing the petitioner's length of service for the purposes of pension etc.

9. The said order has not been challenged in the instant



writ petition. However, a prayer has been made that a direction may be issued for payment of salary for the said period.

10. In view of no challenge to the order dated 28.08.2002, the relief as prayed in the instant writ petition cannot be granted. However, it is submitted by the counsel for the petitioner that his appeal dated 05.05.2003 is pending before the Chairman of the Board for payment of salary for the said period. He submits that on humanitarian ground he has been allowed to submit his joining and resume his duties. The respondents may also consider his prayer for payment of arrears of salary for the said period by further extending the humanitarian consideration in his favour. Moreso, in view of the fact that the original petitioner is since deceased and now the benefits will inure to the legal heirs of the deceased.

11. The respondent no. 1 may consider the petitioner's prayer in the appeal dated 05.05.2003 (Annexure 12) in accordance with law extending the humanitarian consideration if they deem it appropriate and final decision in the said appeal may be taken within a period of eight weeks from the date of receipt/production of a copy of this order.

12. In so far as the prayer for arrears of subsistence allowance is concerned, a stand has been taken by the respondents Board in the counter affidavit filed by them that certain dues could not be paid as petitioner's attendance details from Ranchi for the period



01.08.2000 to 31.01. 2001 has not been received.

13. Let the respondents also take a final decision in respect of the subsistence allowance of the said period and make payment of the admissible dues within the aforesaid period.

14. With the aforesaid observations, the writ petition is disposed off.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.02.2018
Transmission Date	

