IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21626 of 2014

==

Ramadhin Sah Son of late Buchan Sah Resident of Village- Mahesua, P.S& District - Madhepura.

... ... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary,Department of Human Resources,Govt.Of Bihar,Patna.
2. The Director, Secondary Education, Department of Human Resources, Govt. Of Bihar, Patna having its Office at Budha Marg, Patna. null null
3. The Regional Deputy Director Education, Saharsa.
4. The District Magistrate-cum-Collector, Madhepura.
5. The District Program Officer, Madhepura.
6. District Education Officer, Madhepura.
7. Head Master, Utkarmit Madhya Vidyalaya, Bihariganj (Harijan Tola), Block-Bihariganj, District - Madhepura.
8. District Treasury Officer, Madhepuara.
9. District Provident Fund Officer, Madhepura.
10. The Accountant General, Bihar, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Jha, Advocate.
For the Accountant General, Bihar	:	Mr. Satyendra Kumar Jha, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Mishra, S.C.- 16
	:	Mr. Parmod Kumar Singh, Advocate, AC to SC-16

==

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

3 06-11-2018 Heard learned Counsel for the petitioner and Counsel appearing on behalf of the respondents.

2. This writ application was filed by the petitioner for a direction to the respondent to pay all Post retiral benefits to the petitioner.

3. Learned counsel for the petitioner submits that petitioner was appointed as Assistant Teacher on 03.10.1970 and after attaining age of his superannuation he retired on

31.01.2013.

4. On behalf of the respondent, the claim of the petitioner for post retiral dues has been disputed on the ground that petitioner has not completed the qualified period for grant of pension.

5. Counter affidavit filed on behalf of the respondent No.10, it has been stated that sanction has been called for by the respondent vide letter dated 15.1.2015 settling of the post retiral dues, but there is no response.

6. On behalf of the respondent No.5 stand was taken that for post retiral dues petitioner has to complete the requirement of pensionable service. It has been mentioned in the counter affidavit that petitioner had remained absent from December 1996 to July 2007 and thereafter he joined the school and continued upto 31.1.2013. There is no explanation in the counter affidavit that if the petitioner had remained absent from 11 years of long period, why respondents have not taken any departmental action against the petitioner Under rule 76 of the Bihar Service code as the action was required on the part of the respondents in the event of unauthorized absent of five years and above to the contrary after 11 years of long period petitioner was allowed to join the post and he continued upto January

2013. No action was taken by the respondent against the petitioner for alleged absent from the duty from December 1996 to July 2007 and now they are coming with plea that the petitioner has remained absent and there is break in service and as such he is not entitled for pensionary benefits for lack of qualified period.

7. In the totality of the facts situation when no action was taken by the respondent for unauthorized absence of petitioner from December 1996 to July 2007, the Court does not approve the action of the respondents treating the period of such absence as break in service and excluding that period for the purpose of counting of service for grant of pensionary benefits. If the respondents have not taken any decision or action against the petitioner for unauthorized absence for the period from December 1996 to July 2007 as they have not taken any step under rule 76 of Bihar Service Code to the contrary they allowed the petitioner to join in 2007 and allowed him to continue upto attaining the age of superannuation i.e. January 2013, the Court belief that respondents have either condoned the absence of the petitioner from December 1996 to July 2007 and by condoning the absent of the petitioner by conduct they have not treated that period as unauthorized absent. In view of their

own conduct as no action under Rule 76 of the Bihar Service Code is taken against the petitioner, under the aforesaid circumstances, that period of absence for counting the aforesaid period as break in service to deny the pensionary benefits is unsustainable the Court hold that petitioner shall be entitled to pensionary benefits treating the period from December1996 to July 2007 as the continuity in service for the purpose of grant of pensionary benefits. Respondents are directed to grant post retiral dues treating the aforesaid periods continuity and service for pensionary benefits within a maximum period of four months from the date of receipt / production of a copy of this order.

8. With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

T.Kr./-

U			