

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1092 of 2018**

**In**

**Civil Writ Jurisdiction Case No.306 of 2018**

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Bhuwneshwar Mishra S/o Punyadev Mishra, resident of village - Gonahi Mathya, P.O. Mathiya Brit, P.S. Chauradano, District - East Champaran and Retired as In-charge Head Master, Sadguru Kabir Mahant Ram Goswami Project Plus Two (+2) High School, Katkenwa, East Champaran at Motihari.

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Education, State of Bihar, Patna.
3. Secretary, Department of Education, Bihar, Patna.
4. Director, Secondary Education, Bihar, Patna.
5. Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
6. Deputy Director, Secondary Education, Bihar, Patna.
7. The Collector-cum-District Magistrate, East Champaran at Motihari.
8. District Education Officer, East Champaran at Motihari.
9. District Programme Officer, East Champaran, Motihari
10. The Accountant General (AG), Bihar, Patna
11. The Treasury Officer, East Champaran at Motihari.
12. Head Master-cum-Drawing and Disbursing Officer of Sadguru Kabir Mahant Ram Goswami Project Pluc Two (+2) High School, Katkenwa, East Champaran at Motihari.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Anshuman Singh, Advocate  
Mr. Ramakant Yadav, Advocate  
Mr. Rakesh Kumar, Advocate  
For the Respondent/s : Mr.Ashutosh Ranjan Pandey- AAG-15



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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 20-08-2019**

Heard learned counsel for the appellant and the learned counsel for the State.

The learned Single Judge by the impugned judgment dated 18<sup>th</sup> June, 2018 in C.W.J.C. No. 306 of 2018 has disposed of the writ petition filed by the respondent-petitioner with a direction to make the payments of Group Life Insurance, Earned Leave and Provident Fund, but has declined the relief for grant of pension on the ground that the appellant did not complete the requisite years of qualifying service so as to receive pension. The learned Single Judge has also noted the fact brought on record by the respondents that the appellant was working against the second post in the Institution, whereas it was only the first post which has been approved.

During the course of the submissions, learned counsel for the appellant has taken us to the previous round of litigation and we find that when the services of the appellant and other similarly situate Teachers had been terminated, they filed



writ applications before this Court and the said bunch of writ petitions was allowed by a learned Single Judge in the case of **Ram Naresh Mishra and others Vs. The State of Bihar and others**, reported in **2005 (3) PLJR 613**.

The learned Single Judge has noted the arguments and rival contention of the parties in the said decision including the fact as to whether the petitioners were appointed on the post approved for the said school. The said apprehension has been noticed by the learned Single Judge in Paragraph 13 of the reported judgment.

However, while disposing of the writ petition and setting aside the termination orders, the learned Single Judge observed that the Court without going into the merits as to whether the Director was required to look into their appointment as genuine or not, the writ applications were allowed to the aforesaid extent and further directions with liberty to the petitioners to move representations was given for the purpose of verification of the claim of the petitioners to be disposed of in terms of the direction given therein.

The said judgment was delivered on 6<sup>th</sup> of February, 2005.

Assailing the aforesaid judgment of the learned



Single Judge, the State of Bihar filed Letters Patent Appeal before this Court and the Division Bench while upholding the setting aside of termination orders referred to the judgment of the Apex Court in the case of **Secretary, State of Karnataka Vs. Umadevi (3)**, reported in **(2006) 4 SCC 1** and then issued directions to the State Government to carry out an exercise with regard to the status and *modus operandi* of the appointments of the respondent-petitioners. The directions given by the Division Bench are as follows:-

- “(1) The Chief Secretary, Government of Bihar is directed to constitute a Committee of three Secretaries within a period of one month from today to examine the manner and mode and the type of *Modus Operandi* whether the appointments are in consonance with the recruitment Rules, regular, legal or not.
- (2) The Committee shall consider the individual case after giving an opportunity of hearing to the affected employees and reach to a decision as to the nature of their appointments whether legal or not and valid or not.
- (3) The Committee shall, obviously, take the decision in the light of law laid down by the Constitution Bench in *Secretary, State*



*of Karnataka and others v. Uma Devi (3) and others: (2006) 4 SCC 1* and in particular, the observations of the Hon'ble Supreme Court which are quoted hereinabove, particularly, paragraph 53 of the said judgment.

- (4) It shall also be remembered that the exercise of regularisation, if required, shall be one time measure for the whole department and no further such exercise shall be permissible.
- (5) The exercise by the Committee is directed to be completed within six months and in the event of any necessity it will be open for the concerned party to seek extension of time from this Court.
- (6) The State is directed to maintain the status quo.”

In terms of the aforesaid directions the State Government proceeded to constitute a Committee as directed and then in compliance of the aforesaid judgment dated 22.11.2006 a Three Member Committee on 27<sup>th</sup> May, 2008 arrived at the conclusion that the benefits could not be extended including a finding that there was no vacancy available in respect of the post for which the claim had been raised.



The said judgment came to be challenged in a batch of writ petitions including the appellant herein and the writ-petitions were again allowed on 26<sup>th</sup> March, 2009 quashing the said order of the Three Member Committee and holding that the continuance as well as the setting aside of the termination orders earlier has already become final. It was further held that the respondents again now be permitted to again terminate the services of the appellant and as a consequence allowed the writ petition issuing directions for payment of full salary for the periods in question.

The learned Single Judge, however, did not make any observation or issue any directions with regard to the post retirement benefits. The said judgment has not been put to any further challenge according to the submissions raised at the Bar and has become final.

Learned counsel for the appellant contends that the status of the appointment having been confirmed up to this Court in three rounds of litigation and the appellant having been treated to be continuing in service and having received salary is also entitled for all post retiral benefits including pensionary benefits. The submission in short is that the issue relating to as to whether the post is approved or not now stands foreclosed as



there is a presumption on the basis of the continuance and the posting orders issued earlier that the appellant had been allowed to continue against the same post on which he had been appointed and later on terminated which termination orders have been set aside. This entire cycle relating to the service having not been disturbed by this Court, it is the contention on behalf of the appellant that he having completed substantive years of service is entitled to treat his past services to be counted as qualifying for pension and is further entitled for post retiral benefits. The submission in short is that it should be treated that as if the appellant had been continuing against a post that will be treated to have been sanctioned and approved with the finalization of status of appointment of the appellant once termination orders had been set aside and the appellant had been reinstated.

We have noticed the fact in the impugned judgment that the appellant had failed to file any rejoinder to the counter affidavit of the State before the learned Single Judge where the respondent State had taken a clear stand that the appellant had not been appointed against an approved post. We, however, granted time to the learned counsel for the appellant to file an affidavit in this appeal in order to enable him to bring on record



any material so as to controvert the said allegations or any other material that may indicate the status of appointment of the appellant and the status of the post occupied by the appellant.

The appellant has brought on record the order dated 31<sup>st</sup> December, 1990 which is the letter of appointment of the appellant clearly stating therein that the appellant is being appointed as an Assistant Teacher the approval whereof is being given on *ad hoc* basis with effect from 01.04.1986. However, the pay-scale of untrained was given with a further stipulation that in the event the candidate is trained, he would be getting a higher pay-scale. In Clause 3 of the said letter it has been provided that the approval is on *ad hoc* basis and is subject to the recommendations of the School Services Board. Clause 4 of the said letter clearly recites that there is no vacant post in the Institution and, therefore, since the appellant is being appointed under a project then his absorption shall be considered against any such post that may be available either in any project or in any State maintained Secondary School by the concerned District Education Officer.

On a perusal of the said letter, we clearly find that the appellant had not been appointed against an approved post. This inquiry as to whether he had been appointed against an



approved post or a sanctioned post does not appear to have been carried out in any exercise including the judgments that have been rendered inter parties in spite of the fact that the State has always taken a stand with regard to non-availability of an approved post. It is correct that the appellant and other such similarly situate teachers had succeeded in getting their termination orders set aside, but in none of the decisions was there any declaration made or finding recorded with regard to the status of the post which was being occupied by the appellant. The document dated 31<sup>st</sup> December, 1990 and its contents do not appear to have been either assessed or adjudicated upon in any previous proceeding. The State, however, had always taken a stand that the appointment was not against an approved post.

The aforesaid aspect therefore, cannot be ignored by us and consequently we are of the opinion that since the post held by the appellant did not carry the status of an approved or sanctioned post, he cannot be said to be entitled to claim any right of pensionary benefits against such a post. The post being approved and not sanctioned cannot be treated a substantive post even though the appellant may have continued in service on the strength of the orders passed by this Court and by the



respondents and the orders issued by the respondents in this regard. Consequently, the conclusion drawn by the learned Single Judge does not suffer from any legal infirmity for us to enable to issue any direction to the effect that the appellant is entitled to pensionary benefits.

The appeal, therefore, fails and is hereby dismissed.

**(Amreshwar Pratap Sahi, CJ)**

**(Anjana Mishra, J)**

P.K.P./-

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