

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.525 of 2018

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Mahendra Thakur, S/o- late Rup Narain Thakur, Resident of Mohalla- Matri Mandir, Indira Colony, East of Alalpatti, P.O. DMC Camous, P.S. Bahadurpur, District- Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar
 2. The Commissioner cum Secretary, Department of Primary Secondary and Mass Education, Govt. of Bihar, Patna
 3. The Director, Primary Education Bihar, Patna
 4. The Commissioner, Darbhanga
 5. The Collector cum Chairman of Establishment Committee, Darbhanga
 6. The Regional Deputy Director Education, Darbhanga
 7. The District Superintendent of Education Darbhanga
- (Respondents no. 1 to 4 in the writ petition)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Amarendra Narayan, Advocate
For the Respondent/s	:	Mr. Amarendra Kumar, A.C. to 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 : 21-01-2019

Re: I.A. No. 178 of 2019

Heard Shri Amarendra Narayan, learned counsel for the appellant and Shri Amarendra Kumar, Assistant Counsel to learned AAG-15 for the State.

2. The appeal is reported to be delayed by 19 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal.



The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 178 of 2019 stands allowed accordingly.

Re: L.P.A. No. 525 of 2018

This appeal questions the correctness of the impugned judgment of the learned Single Judge dated 20th February, 2018 passed in C.W.J.C. No. 17761 of 2008, whereby the claim of the appellant for extending monetary benefits as well with effect from date of notional promotion granted to him i.e. 01.04.1988 has been denied.

2. The learned Single Judge has upheld the order of the Divisional Commissioner which records that the appellant had not actually discharged his duties as Headmaster and secondly there was no explanation as to why he did not approach the Court earlier. The third reason given is that even otherwise the vacancy against which the appellant was claiming promotion was not available as the posts which were available were of the reserved category whereas the appellant belongs to the General Category.

3. The learned Single Judge has recorded a finding accepting all the three reasons and has further observed that the fact of non-availability of vacancy has not been specifically



controverted in the pleadings and a vague allegation has been made that juniors to the appellant have been extended such benefit.

4. Learned counsel for the appellant has vehemently urged that the very extending of the benefit of notional promotion with effect from 1st of April, 1988 is itself demonstrative of the fact that the vacancy was in existence and, therefore, the appellant who had been denied his valid right of consideration for promotion stood acknowledged by the respondents themselves who extended the benefit of notional promotion to the appellant keeping in view the nature of the vacancy as also his entitlement as such. The contention, therefore, is that for their own mistake the respondents cannot deny the claim of actual promotion together with monetary benefits to the appellant on the pretext that the appellant had not approached timely or no such vacancy was available.

5. On the other hand, learned counsel for the State of Bihar contends that the appellant had initially indicated that he had been denied the benefit of promotion since 1978 which grievance was never raised for almost 20 years and it was only after he was given actual promotion in the year 1995 that he questioned the same by filing an appeal before the Divisional



Commissioner. It is urged that since the appellant had not worked as a Headmaster, he was not entitled to the payment of salary against a promotional post and consequently the denial of salary in the absence of any such work having been performed the claim of payment of salary from the date of notional promotion given to him is unjustified.

6. We have considered the submissions raised and we find that the benefit of notional promotion has been extended to the appellant by an order passed in the year 1995 which does not contain any recital about the entitlement of the appellant to be promoted on account of vacancy being available. This position of vacancy has not been questioned by the appellant in spite of the said fact having been recorded by the Commissioner. In spite of this, the question as to whether the appellant was entitled for any monetary benefits is the only issue which is being pressed by the learned counsel for the appellant with effect from 01.04.1988. In that regard, suffice it to notice that the appellant has been extended the benefit of notional promotion but in the event of the appellant not having actually functioned as such, the salary has been denied to him up to the year 1995. This is not an individual case. The order of promotion dated 24th November, 1995 is in respect of a large



number of such teachers who are similarly placed as the appellant. There is nothing on record to indicate that a differential treatment has been given to the appellant so as to attract the provisions of Article 14 of the Constitution of India. We, therefore, do not find any merit in the appeal so as to reverse the order of the learned Single Judge. In the event the appellant is entitled to such benefits which arise out of the order dated 24th November, 1995 then the competent authority shall examine the same and if the appellant is found entitled to any monetary benefits or otherwise, an order shall be passed to that effect within three months of the date of production of certified copy of the order.

7. The Letters Patent Appeal is, accordingly, dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./- Jagdish

AFR/NAFR	
CAV DATE	
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