

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1894 of 2012

In

Civil Writ Jurisdiction Case No.4659 of 2009

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1. The State of Bihar through the Department of Human Resources Development, Bihar, Patna
 2. The Director, Secondary Education, Bihar, Patna
 3. The Regional Deputy Director of Education, Saran, District- Chhapra
 4. The District Education Officer, Saran at Chhapra at/P.O./P.S./District- Chhapra
 5. The Headmaster, Saran Academy Chhapra At/P.O./P.S./District- Chhapra
 6. The Treasury Officer Saran At/P.O./P.S./Chhapra in Saran District

... .. Appellant/s

Versus

1. Parmanand Singh, S/o Late Saryug Singh R/o Village- Barai, P.O./P.S.- Sarai, District- Vaishali, At Present Retired Headmaster, Saran Academy Chhapra at/P.O./P.S. in The District of Saran
2. The Accountant General of Bihar, Beer Chand Patel Path, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr. Md. Raisul Haque, SC-10 Mr. Binay Kumar, AC to SC. 10
For the Respondent/s	:	Mr. Laxmi Kant Tiwari Mr. Arun Kumar Arun

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 22-10-2019

Heard learned counsel for the appellants, Md. Raisul Haque and Mr. Laxmi Kant Tiwari, learned counsel appearing on behalf of the respondent no.2 as well as Mr. Dhanendra Chaubey, learned counsel for the Accountant General.

2. The present Letters Patent Appeal has been



preferred by the State of Bihar against the judgment dated 02.08.2011 passed in C.W.J.C. No. 4659 of 2009, whereby the learned Single has directed for computation of service of the respondent no.1, who was initially appointed by the Managing Committee of the High School Sindwari, Vaishali, from the date of establishment of the School.

3. In view of conflicting judgments, a Division Bench of this Court, vide order dated 20.11.2013 passed in L.P.A. No. 1568 of 2011 referred the matter to the Full Bench for a decision on the issue of qualifying period of service of an employee of a Non-Government Grant-in-aid Secondary School, which is taken over by the State Government in exercise of its powers conferred by the Bihar Non-Government Secondary Schools (Taking Over of Control and Management) Act, 1981.

4. The basic issue referred for decision by the Full Bench was whether the qualifying period of service of an employee of a Non-Government Grant-in-aid Secondary School taken over by the State Government shall be counted from the date of recognition of the School or from the date of permission to establish the School.

5. The relevant portion of the judgment of the



Full Bench passed in L.P.A. No. 1568 of 2011 with analogous cases in paragraph nos. 41 and 42 read as follows:

"41. Considering the totality of the fact, we are of the considered view that the contentions advanced by Mr. Anjani Kumar that liability to grant pension to employees of private school under the 1962 and 1964 scheme or 1974 or 1976 Ordinance and Act does not pass on to the State Government and there is no liability of the State Government to grant pension, gratuity and provident fund to the teachers covered under the triple benefit scheme prior to take over are misconceived. The Court on careful consideration of the entire scheme of the Act and the notifications issued from time to time either for the purpose of counting service or for extending the benefit of triple benefit scheme and pension, as indicated hereinabove, is of the considered view that pension is admissible not only from the date of take over but from the date of grant of permission to establish in view of the fact that the Board took a conscious decision to count service from the date of grant of permission for establishment of the school. The decision of the Secondary Board to count service from the date of grant of permission to establish secondary school is saved by operation of Section 21 of the repeal and saving clause of the 1980 Ordinance and once the action of the Board is saved it follows as a matter of corollary that service is to be counted from the



date of grant of permission to establish secondary school for the purpose of pensionary benefits.

42. Accordingly, we hold that teachers appointed prior to grant of permission shall reckon their service from the date of grant of permission for establishment of the institution and their service should be counted from that date for the benefit of pension."

6. The writ application was filed in the factual backdrop that the writ petitioner joined as Assistant Teacher at Saran Academy Chapra on 02.01.1968 and retired as Headmaster of the School on 30.11.2004. After the retirement of the writ petitioner, his pension and pensionary benefits were required to be fixed by the authorities concerned, regarding which query was made with regard to the date of commencement of petitioner's service, which was specifically on the issue whether the date of commencement should be the date of establishment of the school or the date when full recognition was granted to the school. Such query was made in order to calculate the service length of the petitioner. It emerges from the facts and records that the school in which the petitioner joined as Assistant Teacher was accorded permission for establishment by the State vide order dated 20.02.1974, while recognition was granted to the school on 09.05.1977.



7. The writ petitioner had thus prayed to quash the Letter No. 2/PN-1-250/4 Ma./1259 dated 16.08.2007, whereby the writ petitioner had claimed for counting his service from the date of establishment of the school, has been rejected. It was the contention on behalf of the petitioner that his writ application has been rejected on the basis of an order passed by Single Bench in C.W.J.C. No. 10726 of 2004 (Arun Jha Vs. The State of Bihar & Ors), while overlooking the Division Bench order in similar matter in C.W.J.C. No. 430 of 1993 (Smt. Bharti Ojha Vs. State of Bihar & Ors.).

8. On considering the entire issue raised by the writ petitioner, the learned Single Judge, after considering a Division Bench decision dated 09.03.1994 in C.W.J.C. No. 430 of 1993, wherein identical issue was under consideration, held and directed the respondent authorities to count the petitioner's service from the date of establishment of the school instead of counting from the date of recognition and to fix the pension and pensionary benefits, accordingly.

9. On careful consideration of the entire issue under concern and the Full Bench decision dated 18.04.2019 in L.P.A. No. 1568 of 2011, wherein the issue under concern has been settled, the relevant paragraphs of which has been quoted



above, we find no error in the order of the learned Single Judge, which is under challenge.

10. While parting, we find it necessary to point out that in the order of the learned Single Judge, which is under challenge, it has been mentioned that the date of according of permission for establishment of the school in which the petitioner had rendered his services, is 20.02.1974, whereas, in the writ application in paragraph no. 9, it has been mentioned as 20.06.1974. We find it appropriate to direct the respondent authorities to ascertain and verify the date of according of permission for establishment of the school.

Since the judgment of the learned Single Judge is in terms of the judgment of the Full Bench, we find no merit in the Appeal.

11. Accordingly, the present Letters Patent Appeal is dismissed.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	N.A.F.R.
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