

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.29 of 2014
In
Civil Writ Jurisdiction Case No.5700 of 2011

1. The State of Bihar
 2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
 3. The Director, Secondary Education, Govt. of Bihar, Patna
 4. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, Bihar
 5. The District Education Officer, East Champaran, Bihar
- Appellant/s

Versus

1. Ram Baboo Singh, Son of Late Veer Singh, Resident of Village Kushir, P.O. Kesariya, P.S. - Kesariya, District - East Champaran
 2. The Accountant General, Bihar, Birchand Patel Path, Patna
- Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajeet Kumar, G.A. IX Mr. Manoj Kumar Sinha, AC to GA IX
For the Respondent/s	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Laxmi Kanti Tiwari Mr. Brisketu Sharan Pandey.
For the A.G.		Mr. Dhanendra Chaubey

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, Mr. Manoj Kumar Sinha and Mr. Tej Bahadur Singh, learned counsel appearing on behalf of the respondent no.1 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 17.05.2013 passed in C.W.J.C. No.5700 of 2011, whereby the learned Single has directed for computation of service of the respondent no.1, being the Teacher of Secondary School 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 was appointed as an Assistant Teacher on 02.02.1970 by the Management Committee of the School. The issue which arose was to the effect that from when should the service of an employee of a taken over school be counted for the purposes of retiral dues, and while considering this issue, it was held that the question has already been decided by a bench of this Court, after reviewing various judgments, in C.W.J.C. No. 1046 of 2006 (Smt. Asha Sharma Vs. The State of Bihar & Ors.) disposed on 28.03.2011, wherein it has been held that the period of service of the employees shall in such a situation be counted from the date the permission to establish was granted. In the case of the writ petitioner, the permission was granted to establish the school on 14.01.1975 and accordingly, it was held by the learned Single Judge, that the date from which the services of the petitioner has to be considered, should be



14.01.1975.

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

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.

8. 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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