

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1674 of 2018

In

Civil Writ Jurisdiction Case No.5152 of 2016

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Dr. Sunita Kumari, Wife of Dr. H.N.P. Singh, Headmistress of S.M. Girda
Higher Secondary School, Mirzanhat, At P.S. & District -Bhagalpur.

... .. Appellant

Versus

1. The State of Bihar
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Principal Secretary, Finance Department, Government of Bihar, Patna.
4. The Deputy Secretary, Finance Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Helal Ahmad, Adv.

For the Respondent/s : Mr. Ashutosh Ranjan Pandey, AAG-15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

Heard learned counsel for the appellant and the



respondents.

Re. Interlocutory Application No.1 of 2018 (8915 of 2018).

The aforementioned Interlocutory Application has been filed with a prayer for condonation of delay of 31 days in filing the present appeal.

Considering the grounds taken in the Interlocutory Application showing sufficient reasons for not filing the appeal in time, the delay of 31 days in filing the present appeal is hereby condoned.

Accordingly, Interlocutory Application No.1 of 2018 (8915 of 2018) stands allowed.

Re:- L. P. A. No. 1674 of 2018.

The present appeal has been filed for setting aside the order dated 26.09.2018, passed in C.W.J.C. No. 5152 of 2016 and other analogous cases, whereby the learned Single Judge has dismissed the writ application, which was preferred for quashing of the order dated 29.01.2016, contained in Memo No. 279, issued under the signature of the Director, Secondary Education, Government of Bihar, Patna, whereby, the appointment of the appellant on the post of Headmaster was treated as a fresh appointment and thereby she was not given



any pay protection for the period she served as an Assistant Teacher in Jawahar Navodaya Vidyalaya, Lalmatia, Godda.

The factual matrix of the case is that in the year 2005, an advertisement was published by the Bihar Public Service Commission inviting application for appointment on the post of Headmaster to fill up all the vacant posts in the secondary schools. In pursuance to the said advertisement, the appellant submitted an application for being appointed on the post of Headmaster. The appellant, vide Memo No. 1888, dated 30.06.2014, issued under the signature of Joint Director, Education Department, Government of Bihar was appointed on the post of Headmaster and consequently she was posted as such in +2 High School, Katiknar, Bhagalpur. The appellant, after being relieved from Jawahar Navodaya Vidyalaya, joined on the post of Headmaster on 01.11.2014. The Accountant General issued a pay slip of Rs. 42180/- per month. Since the appellant was not provided pay protection for service rendered as Assistant Teacher in the Jawahar Navodaya Vidyalaya, she suffered a loss of Rs. 20,000/- per month. The appellant made a representation before the concerned authorities claiming pay protection, but the same was rejected vide order dated 29.01.2016, contained in Memo No. 279, issued under the



signature of Director, Secondary Education, Government of Bihar, Patna treating the appointment of the appellant as fresh recruitment, hence no pay protection can be made. The said order was under challenge before the Writ Court and the learned Single Judge dismissed the writ application mainly on the ground that the appellant, being an Assistant Teacher in Jawahar Navodaya Vidyalaya cannot claim pay protection because she has been appointed on the post of Headmaster in pursuance to the fresh advertisement, without there being any contract between the appellant and the State Government. Hence, the present L.P.A.

Learned counsel for the appellant submits that the other teachers, who were working in the State of Bihar and were also appointed as Headmaster in the same transaction, have been given pay protection. Under Rule 3 of the Bihar Service Code (hereinafter referred as ‘ the Code’), the appellant should also be provided pay protection. Learned counsel for the appellant relied upon the judgment of Hon’ble Supreme Court, in the case of **Krishna Kant Tiwari Vs. Kendriya Vidyalaya Sangh Tan** reported in **(2014) 3 SCC 471**, whereby pay protection was provided to the Teachers who were working in the schools of the State Government and were appointed in the service of



Kendriya Vidyalaya Sanghtan.

It is submitted by learned counsel for the respondent-State that the appellant's appointment on the post of Headmaster was a fresh appointment and there was no stipulation in the advertisement with regard to pay protection. Moreover, the provision of Rule 3 of the Code will not apply to the appellant since the appellant was not an Assistant Teacher in the schools run by the State Government and hence she was not governed by the Code. In the similar manner, in the case of the State of Bihar and Ors. Vs. Rajendra Rai and Ors. (L.P.A. No. 374 of 2019 and other analogous cases) a Division Bench of this Court set aside the order of learned Single Judge, whereby the pay protection was directed to be given.

Having heard learned counsel for the parties, this is not in dispute that the appellant's appointment on the post of Headmaster was a fresh appointment. There is nothing on record to suggest that the advertisement contained any stipulation with regard to pay protection. The appellant cannot claim the pay protection by virtue of application of Rule 3 of the Code. Rule 3 of the Code reads as follows:-

“3. (a) Nothing in these rules shall operate to deprive any person of any right or privilege to which he is entitled by or under any law, or by the terms of any contract or agreement subsisting



between such person and the Government.

(b) Nothing in these rules shall operate to confer on any person any right or privilege in respect of any matter for which specific provision is made by the terms of any contract or agreement between himself and the Government.

(c) Any omission from these rules of any order applying to particular appointments or to particular individuals which is believed to be still in force may be brought to the notice of Govt. in the Finance Department through proper channel and until the said order is so confirmed or otherwise rectified, it shall be treated as superseded and not in force.

(Comments.- Right and Privileges as a result of terms of contract or agreement into between a person and the Govt. Shall not be affected by the rules in this Code.)”

From perusal of the above quoted Rule, it appears that the privilege can be claimed by any person by virtue of any stipulation under the law or contract or agreement subsisting between such person and the government. Admittedly, the appellant was working under the Navodaya Vidyalaya prior to being appointed as a Headmaster and for the first time, she entered into the services of State Government, hence, she cannot claim the pay protection by operation of Rule 3 of the Code.

The concept of pay protection is the basis and fundamental principle which permeates all fitments or fixations of pay in a revised scale. The fitment must be such that the total emoluments are not reduced, because that would be unfair and



unreasonable violation of Article 14. The concept of pay protection, however, is not to be applied universally as a rule of thumb and the benefit of pay protection would definitely not be available to an employee, who, on his own volition, seeks transfer or opts for a fresh appointment on certain terms and conditions which provided that he would be given a different scale of pay or the appointment is outside the parent government.

The benefit of pay protection is available to the teachers or for that matter the employees who are covered by the provisions of the Bihar Service Code and the same benefit could not be extended to any teacher who enter into the service of the Government of Bihar from outside the Government of Bihar service; as in the present case, the appellant has entered into the service of Government of Bihar from Navodaya Vidyalaya. The petitioner/appellant, being fully aware of the terms of the advertisement and also having accepted the appointment on a particular terms and also in the absence of any contract with the State of Bihar, cannot claim the benefit of pay protection. It is a protection which is available only when the movement is within the State Government or when the movement is regulated by a common service code.



The learned counsel for the appellant, in support of the claim of pay protection, relies upon Rule 3 of the Code and argues that in terms of Rule 3, the pay protection is available to the appellant. The learned Single Judge, while deciding the writ petition has taken note of Rule 3 of the Code and has rather extracted the provision in extenso.

The issue with regard to pay protection of other teachers who were appointed on the post of Headmaster in the same transaction was under consideration in L.P.A. No. 374 of 2019 and other analogous cases, whereby the order of learned Single Judge, allowing the writ application giving the pay protection, was set aside treating the appointment on the post of Headmaster as a fresh recruitment. Paragraph nos. 8, 9 and 10 of the judgment read as follows:-

“8. We are a bit perplexed as to under what circumstances, a clarification was sought by the State with respect to the treatment which was to be meted to such direct recruits/appointees on the post of Headmaster. In the event of their being appointed in a fresh recruitment process, there was no confusion and no clarification was required. Only by seeking such clarification, the State has created a ghost and is now trying to kill the same. The Finance Department, on being asked has given a clear finding that the original writ-petitioners be treated as fresh recruits. It has also been clarified by the Finance Department, which fact has been notified by the Director of Secondary Education, Government of Bihar to the Accountant General vide communication dated 29th of January, 2016 that only because of such persons having worked



in the State of Bihar as teachers, they would not be entitled to have any pay protection; rather they would be subject to the pay as set out in Schedule-II of the notification.

9. Under the aforesaid circumstances, we find it difficult to sustain the order of the learned Single Judge which gives pay protection to fresh recruits on the post of Headmaster.

10. The orders impugned are set aside.”

We are in full agreement with the reasons assigned by the learned Single Judge for declining the relief claimed in the writ petition and we are unable to fathom any reason to take a different view.

Putting the seal of affirmance on the judgment rendered by the learned single Judge, we dismiss the present L.P.A.

The instant appeal is, accordingly, dismissed. However, there shall be no order(s) as to cost.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/Amrendra/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

