

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1069 of 2015

In
Civil Writ Jurisdiction Case No.6988 of 2009

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1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Government o Bihar, Patna
 2. The Director, Secondary Education, Budh Marg, Patna.
 3. The District Education Officer, Arwal -cum- Jehanabad at Jehanabad.
 4. The District Provident Fund Officer, Arwal -cum- Jehanabad at Jehanabad.
 5. The Treasury Officer, Arwal -cum- Jehanabad at Jehanabad.

... .. Appellants

Versus

1. Md. Zaffar Imam, S/o Late Gulam Mustafa, Resident of Village Dhodhra, P.S. Kurtha, P.O. Kurtha, District Arwal.
2. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Subodh Kumar, AC to SC 26
For the Respondent/s : Mr. Amarendra Kumar

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 08-01-2020

Heard Mr. Subodh Kumar, learned Counsel for the appellants and Mr. Amarendra Kumar, learned Counsel for the respondent no. 1-writ petitioner.

The present Letters Patent Appeal has been preferred against the judgment, dated 12.08.2014, passed in CWJC No. 6988 of 2009, whereby the learned Single Judge has directed to calculate the services of the writ petitioner for the purposes of



pensionary and other consequential benefits from the date of his initial appointment, i.e. 16.01.1971 and the authorities have been further directed to make payment of pensionary and other consequential benefits to the writ petitioner within a period of four months.

The factual matrix of the case is that the petitioner preferred CWJC No. 6988 of 2009 for reckoning his services from the date of his initial appointment for grant of pensionary and other consequential benefits. The said writ application, along with another writ application of similar nature, being CWJC No. 6333 of 2009 (Rabindra Sharma v. The State of Bihar and others), was allowed by judgment, dated 12.08.2014, in the following terms:

“22. On the basis of the aforesaid discussions, both the above stated writ petitions stand allowed and the respondents, particularly, respondent 3-District Education officer, Arwal, Jehanabad is directed to calculate the period of services of the petitioner in CWJC no.6333/2009 for pensionary and other consequential benefits with effect from 01.08.1974 and similarly, service of the petitioner in CWJC no.6988/2009 for pensionary and other consequential benefits with effect from 16.01.1971 and to ensure payments of pensionary and other consequential benefit with effect from above stated respective dates to the petitioners within the period of



four months from the date of receipt/ production of a copy of this order.”

In view of conflicting judgments rendered by two Division Benches — one reported in 2007 (2) PLJR 239 (Shyam Kishore Sharma v. The State of Bihar and Others) and the other in the matter of Madho Sharma v. The State of Bihar and Others; in CWJC No. 15725 of 2010, decided on 05th July, 2013, and on consideration of Government Circulars, dated 29.11.1978 and 30.08.1980, as well as the Bihar Non-Government Secondary Schools (Taking over of Control and Management) Act, 1981 and Bihar Nationalized Secondary Schools (Service Conditions) Rules, 1983, three diverse opinions for calculating the service for the purposes of pensionary benefits, which are as under:-

(a) to count service from the date of take over treating the non-teaching employee as government servant,

(b) counting the service from the date of grant of recognition of the non-government school and

(c) reckoning of service from the date of grant of permission to establish the school.

Considering such divergent opinions, when similar question came up for consideration, LPA No. 1568 of 2011 (The State of Bihar v. Smt. Asha Sharma), LPA No. 1681 of 2013 (The



State of Bihar v. Smt. Rajbali Devi and Another), CWJC No. 3486 of 2008 (Birendra Narayan Singh v. The State of Bihar and Others), CWJC No. 13563 of 2006 (Bhola Prasad v. The State of Bihar and Others) were referred before a Full Bench of this Court. The Full Bench of this Court decided the issues, vide judgment, dated 18.04.2019, as reported in 2019 (2) PLJR 724, wherein it was held that the teachers appointed prior to grant of permission for establishment shall reckon their service from the date of grant of permission for establishment of the institution and service should be counted from that date for the benefit of pension. Paragraph 42 of the said judgment reads as under:-

“(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.”

In the present case, this is not in dispute that the petitioner was appointed as Assistant Teacher in Ram Ratan Sachai School, Kurtha, Gaya, on 16.01.1971, but the permission for establishment of the said school was granted on 29.03.1976, though the school was taken over by the State Government with effect from 02.10.1980.



In view of the ratio laid down by the Full Bench, In the case of **Asha Sharma** (supra), we modify the judgment of the learned Single Judge, passed in CWJC No. 6988 of 2009, to the effect that the service of the petitioner shall be calculated for the pensionary and other consequential benefits from the date of establishment of the said institution, i.e. from 29.03.1978.

It is submitted by learned Counsel for the respondent no. 1 that in pursuance of the judgment of the learned Single Judge, the payment of pensionary and other consequential benefits have been made to the petitioner counting the date from initial appointment, i.e. 16.01.1971, the authorities are directed to re-calculate the pensionary and other consequential benefits and adjust the excess payment, if any, in future payments, since the payment was made to the writ petitioner subject to the outcome of the appeal.

This appeal is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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