

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1238 of 2019

In

Civil Writ Jurisdiction Case No.12783 of 2014

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1. The State Of Bihar Through the Principal Secretary, education Department Bihar, Patna.
 2. The Director, Secondary Education, Buddh Marg, Patna.
 3. The Regional Deputy Director of Education, Darbhanga Division, Darbhanga.
 4. The District Education Officer, East Champaran, Darbhanga.
 5. The Headmaster, Project Girls High School, Darbhanga.

... .. Appellant/s

Versus

1. Lilakant Jha Son of Late Mr. Damodar Jha, Resident of Village and P.O.- Baghani Bhaluahia, P.S.-Manigachi, Distirct-Darbhangha.
2. The Headmaster, Project Girls High School, Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs. Binita Singh, SC 28 Mr. Nishant Kumar Jha, AC to SC 28
For the Respondent/s	:	Mr. Pramod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 11-10-2022

Heard learned counsels for the respective parties.

2. On 06.09.2022 following order was passed:

“Four weeks time is granted to file counter affidavit, if any, failing which matter would be heard.

Re-list this matter on 11.10.2022.”

3. On 26.07.2022 following order was passed:

“Issue notice to respondents under both processes, i.e. ordinary as well as registered post with A/D, for



which requisites must be filed within a period of two weeks.

Crux of the matter in the present L.P.A. seems to be whether the respondent is entitled to ACP benefit with reference to initial appointment in the year 1988 followed by termination in the year 2008. Termination order was subject-matter of litigation before this Court. It has attained finality in L.P.A. No. 1492 of 2009 and connected matters in the L.P.A. decision. Division Bench held that *"Such reinstated Respondent writ petitioner would however be given continuity in service only for the purposes of their post retirement benefits"*.

In the light of the aforesaid order and the fact that respondent have not questioned the validity of the order dated 06.04.2010 passed in L.P.A. 1492 of 2009 and connected matters whether the respondent is entitled to count service during the intervening period from the year 1988 towards grant of ACP or not?

Re-list this matter on 06.09.2022.”

4. Learned counsel for the State – appellant submitted that in the light of the fact that respondent service's were terminated in the year 2008 and it was subject matter of litigation before this Court and it has attained finality in L.P.A. No. 1492 of 2009 and connected matters wherein Division Bench held that such reinstatement of respondent – *Lilakant Jha* is however be given continuity in service only for the purpose of post retirement benefits. Extending A.C.P. benefit is while he was in service. In the absence of challenge to the L.P.A. order passed in L.P.A. No.



1492 of 2009 insofar as restricting continuity of service only for the purpose of post retirement benefits, the respondent has not made out a case. Learned Single Judge has committed error in not appreciating the observation made by this Court in L.P.A. No. 1492 of 2009.

5. Heard learned counsel for the appellant.

6. Having regard to the dates and events that the respondent was appointed in the year 1988. His services were terminated in the year 2008 and it was subject matter of litigation before this Court. While ordering reinstatement among others and respondent *Lilakant Jha*, this Court has specifically made an observation that “*Such reinstated respondent writ petitioner would however be given continuity in service only for the purposes of their post retiral benefits*”. In the light of the aforesaid observation and it has attained finality, so also respondent *Lilakant Jha* has not questioned the observation made by the L.P.A. Bench. In the result, the learned Single Judge has committed error in not appreciating the observation made by the L.P.A. Bench in L.P.A. No. 1492 of 2009.

7. Accordingly, the appellant State has made out a *prima facie* case that the respondent *Lilakant Jha* is not entitled to A.C.P. benefits for the reasons that A.C.P. benefit would be granted while



he was in service. On the other hand, this Court has taken note of that continuity of service is required to be extended only for post retiral benefits. Hence order of the learned Single Judge dated 19.09.2018 passed in CWJC No. 12783 of 2014 stands set aside while rejecting respondent *Lilakant Jha* writ petition CWJC No. 12783 of 2014.

8. At this stage learned counsel for the respondent pointed out Annexure - R1 to the counter affidavit. M.J.C. Case No. 4903 of 2011 decided on 10.09.2012 reads as under:

“Having perused the contents of this miscellaneous application as also after hearing the parties we are satisfied that the petitioners infact want either a belated review or unnecessary clarification of the judgment and order dated 6.4.2010 passed in a batch of writ appeals on a wholly unsustainable ground of an earlier order dated 09.02.2009 passed in C.W.J.C No. 185 of 2001 and its analogous case by learned single and the consequential order of the Director Secondary Education, Bihar, Patna which in any event cannot be entertained after final disposal of a case as was held way back case by a was by the Apex Court in the case of State of U.P Vs Brahm Datt Sharma and Anr, reported in 1987 SC 943.

In that view of the matter, this application is not maintainable and is, accordingly, dismissed.

We would, however, make it that clear dismissal of this Miscellaneous Application will not stand in the way of the petitioners in claiming appropriate relief as with



regard to consequential benefit arising out of their reinstatement.”

9. The aforesaid observation would not assist the respondent for the reasons that as long as observation made in L.P.A. No. 1492 of 2009 cited *supra* is not set aside, the respondent is not entitled to count service from the date of termination till reinstatement for the purpose of A.C.P. benefit for the reasons that service benefit has been restricted to only post retiral benefits.

10. Learned counsel for the respondent submitted, on instruction, that respondent was reinstated on 02.02.2011 and he is still in service. If it is so, the concerned appellant is hereby directed to examine claim of A.C.P for the period from 02.02.2011 to as and when he completed ten years of service and other criteria. The same shall be examined by the concerned appellant, if it is not already settled, and take a decision within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	14.10.2022
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