

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.921 of 2015

In
Civil Writ Jurisdiction Case No.6333 of 2009

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1. The State of Bihar through the Principle Secretary Department of Human Resources Development Govt. of 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.

... .. Appellant/s

Versus

- 1.1. Mr. Arun Kumar Son of Late Rabindra Sharma, Resident of village-Pokham, Post - Pandaul, District - Jehanabad.
- 1.2. Mrs. Baby Kumari Daughter of Late Rabindra Sharma, Resident of village-Pokham, Post - Pandaul, District - Jehanabad.
2. The Accountant General, Bihar, Birchand Patel Path, Patna.

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 14-03-2023

Re: IA No. 2 of 2015 (3903 of 2015)

Heard I.A. No. 2 of 2015 (3903 of 2015) for condoning the
delay of 204 days.



2. For the reasons stated in the application and affidavit, delay of 204 days is condoned. I.A. No. 2 of 2015 (3903 of 2015) stands allowed.

3. Today also none appears on behalf of respondents.

4. Core issue involved in the present *lis* is whether respondent Nos. 1.1 and 1.2, *Mr. Arun Kumar and Mrs. Baby Kumari* are entitled to claim any monetary benefits with reference to their late father *Rabindra Sharma* read with the service particulars of deceased *Rabindra Sharma* to the extent whether deceased *Rabindra Sharma* is entitled to count service from the date of his initial appointment i.e. with effect from 01.08.1974 or not?

5. On 14.02.2023, following order was passed:

“None appears for the respondent.

Core issue involved in the present *lis* is whether respondent – Rabindra Sharma is entitled to count his service from the initial appointment namely, with effect from 01.08.1974 for the purpose of calculation of retiral benefits and fixation of pension or not? In identical matter, this Court in the Full Bench decision reported in **2019 (2) PLJR 724 (State of Bihar and Ors. vs. Smt. Asha Sharma)** in para 42 it is held 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.”



Undisputed facts are that respondent - Rabindra Sharma was appointed on 01.08.1974, whereas permission was granted for establishment with effect from 29.03.1976.

In the light of these facts and circumstances, respondent – Rabindra Sharma is not entitled to count his past service from 01.08.1974 to 29.03.1976.

In order to give one opportunity, re-list this matter on 14.03.2023 as a last chance. If there is no representation, matter would be decided, since the present *lis* is of the year 2015.

Learned counsel for the State – appellant is hereby directed to secure Bihar Secondary School Examination Board Act, 1976 read with relevant *memo* incorporating the subject matter of school.”

6. Today, learned counsel for the State has furnished Bihar Secondary School Examination Board Act, 1976 (for short ‘Act, 1976’). In the light of Act, 1976, deceased *Rabindra Sharma* is not entitled to count his past service from 01.08.1974 for the purpose of retiral benefits including monetary benefits till 29.03.1976. The learned Single Judge has committed error in not noticing the statutory provision under which deceased respondent late *Rabindra Sharma* is not entitled to count service with effect from 01.08.1974 till 29.03.1976. In the absence of statutory right vested with the respondent *Rabindra Sharma* for the purpose of claiming service benefits during the intervening period from 01.08.1974 to 29.03.1976, the learned Single Judge has committed



error, therefore, order of the learned Single Judge dated 12.08.2014 passed in C.W.J.C. No. 6333 of 2009 is set aside while allowing the L.P.A. in part to the extent that deceased *Rabindra Sharma* is not entitled to count his service from 01.08.1974 till 29.03.1976 for the purpose of service and retiral benefits.

7. Accordingly, L.P.A. stands allowed.

8. Pending I.A., if any, stands disposed of.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.03.2023
Transmission Date	NA

