

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1147 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.2157 of 2017**

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1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, New Secretariat, Patna
  2. The Director, Secondary Education, Budh Marg, Patna.
  3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
  4. The District Education Officer, East Champaran, Motihari.

... .. Appellant/s

Versus

1. Rajiv Kumar Dubey and Anr Son of Harikishore Dubey, resident of Village-Bhaluahia, P.S.- Adapur, District- East Champaran.
2. Suresh Kumar, son of Basudeo Pandey, resident of village- Belawa, P.S.- Harpur, District- East Champaran.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Ms. Binita Singh, SC 28  
For the Respondent/s : Mr. Siya Ram Shahi, Advocate

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

**Date : 17-01-2023**

Heard learned counsels for the respective parties.

2. Pursuant to the earlier order, learned counsel for the respondents tried to stress that respondents are entitled to count the intervening period from the date of dismissal till reinstatement for the purpose of extending M.A.C.P./A.C.P. benefits. Paragraph No. 31 of the L.P.A. 1492 of 2009 and connected matters decided on 06.01.2010 reads as under:



*“31. Upon completion of this exercise which must be completed positively within a period of four months of receipt/production of this order, the competent authority shall reinstate the concerned respondent writ petitioners who would fulfill all the aforesaid three conditions as indicated above. Though the respondent writ petitioners from their date of reinstatement in terms of the present order would be entitled for payment of salary but no payment of salary would be made for the period they have remained out of service. Such reinstated Respondent writ petitioner would however be given continuity in service only for the purposes of their post retirement benefits. In other words, they would not be entitled for any other financial benefits for the period they have remained out of service save and except the continuity in service.”*

3. Reading of the aforesaid judicial order, it is crystal clear that the intervening period from the date of dismissal/termination till reinstatement, the service would be counted only with reference to post retirement benefits as is narrated in the aforesaid paragraphs. Therefore, the appellant – State have made out a *prima facie* case so as to interfere with the order of the learned Single Judge dated 29.03.2018 (modified by an order dated 05.07.2018) passed in C.W.J.C. No. 2157 of 2017

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and they are set aside and decision of the appellant – Department is affirmed. Accordingly, State L.P.A. stands allowed.

4. Pending I.As, if any, stands disposed off.

5. At this stage, learned counsel for the respondents submitted that before terminating, some of the respondents, they have been extended benefit of A.C.P. That shall not be disturbed. Reading of paragraph No. 31 of the order passed in L.P.A. No. 1492 of 2009 and connected matters, it speaks of only termination/dismissal and reinstatement. In other words, the intervening period is not counted for any service benefits other than post retirement benefits.

**(P. B. Bajanthri, J)**

**( Arun Kumar Jha, J)**

GAURAV S./-

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