

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1463 of 2016

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Baidehi Sharan Prasad son of Late Brahmadeo Prasad, resident of village- Khurasan, O.P. Banma, Ithari, Post- Rasalpur, District- Saharsa, at present residing in the House of Sri Binod Choudhary, Mohalla- Bagmali, Hajipur, P.S. Hajipur Sadar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Principal Secretary, Department of Human Resources Development, Government of Bihar, New Secretaria
3. Director, Secondary Education Directorate, Budh Marg, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Veena Kumari Jaiswal
	:	Mr. Rajeev Kumar
	:	Mr. Avarindra Kumar Jha
	:	Mr. Ram Naresh Jha
For the Respondent/s	:	Mr. J.P. Karan- Aag4
	:	Mr. Pankaj Kumar Singh (Ac to Ga9)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

18 03-09-2024

1. The petitioner has superannuated from service as Headmaster from Mahanth Narayan Das Uchcha Vidyalaya, Chakbhara, Saharsa, on 31.07.1985 after completion of more than twenty five years of service as Headmaster. He has filed the present writ application for quashing the Memo No. 852, dated 25.03.2015, with further direction to consider the case of the petitioner for grant of second time bound promotion on completion of twenty five years of continuous service.

2. The petitioner initially joined as Headmaster at



Maubi Lal Bhagat High School, Kasnagar, Saharsa, on 21.03.1960, where he worked upto 30.09.1966. The petitioner was terminated on 06.02.1965, however, the termination order of the petitioner was set aside by the appellate authority and he was directed to join the same school *vide* letter no. 2157, dated 26.04.1966.

3. Learned counsel for the petitioner submits that pursuant to the order, restoring the services of the petitioner, the petitioner joined in the same school and worked there till 30.09.1966 which would be evident from the service book at page no. 50 filed by the petitioner along with his supplementary affidavit. Learned counsel further submits that by office order, dated 12.08.1983, the continuity of the service of the petitioner was given with effect from 21.03.1960 because after 30.09.1966, the petitioner joined another school on 01.10.1966 namely Mahanth Narayan Das Uchcha Vidyalaya, Chakbhara, Saharsa, as a Headmaster. This continuity in service of the previous school as well as the new school was given to the petitioner in the light of the circular of the State Government, dated 18.07.1992. The petitioner has been given the pension by calculating his service from 21.03.1960 i.e., the date of joining of the petitioner in Maubi Lal Bhagat High School.



4. Referring to *Annexure 5*, learned counsel submits that Secondary Education Council, Bihar, *vide* its letter, dated 11.02.1967, granted approval to Mahanth Narayan Das Uchcha Vidyalaya, Chakbhara, Saharsa, with effect from 01.01.1966 meaning thereby on the date of joining of the petitioner, the school in question was having requisite approval from the competent authority. If the length of service is counted from 21.03.1960, the petitioner shall be entitled for consideration for second time bound promotion after completion of twenty five years of service.

5. On the other hand, learned counsel for the State argued that after termination order of the petitioner was set aside by the appellate authority, he was directed to submit his joining in the same school i.e., Maubi Lal Bhagat High School, Kasnagar, but instead of joining in the said school, the petitioner joined in another school namely Mahanth Narayan Das Uchcha Vidyalaya, Chakbhara, Saharsa, on 01.10.1966. On the date of joining on 01.10.1966, the school, in question, was not approved by the Education Council, as such, by the impugned order, the claim of the petitioner has rightly been rejected by the Director, Secondary Education, on the ground that there was break in service of the petitioner.



6. As per the circular of the State Government, dated 18.07.1992, having Memo No. 636, the continuity of service of Teacher/Headmaster or the employees can only be granted if the teacher has worked in the school approved by the Education Council. Since, the petitioner joined the new school without having the approval on the date of his joining, he is not entitled for counting his service from 21.03.1960 but from 1966 after grant of approval to the school at Chakbhara by the Education Council.

7. After having heard learned counsel for the parties, the issue which emerges is that whether the petitioner's service should be counted from 21.03.1960 or from 01.10.1966 when the petitioner joined in Mahanth Narayan Das Uchcha Vidyalaya, Chakbhara, Saharsa. From *Annexure 7*, it appears that earlier, the petitioner joined as Headmaster of Maubi Lal Bhagat High School at Kasnagar on 21.03.1960 where his services was terminated and that termination was set aside by the appellate authority with a direction to the petitioner join in the said school *vide* Memo No. 2157, dated 26.04.1966.

8. From the service book, it appears that date of appointment of the petitioner in the Maubi Lal Bhagat High School in 1960, has been taken into account and it has been



mentioned that the petitioner worked in that school from 21.03.1960 to 30.09.1966 meaning thereby after the order of reinstatement of the petitioner passed by the appellate authority on 26.04.1966, the petitioner continued to work in that school till 30.09.1966. Subsequently, the petitioner joined another school at Chakbhara on 01.10.1966. The dispute has been raised by the respondent that on the date of joining of the petitioner in the school at Chakbharo, the same was not approved/recognized by the Education Council, as such, the claim of the petitioner, of continued service with effect from 21.03.1960, cannot be taken into consideration in the light of the circular of the government referred hereinabove of 1992.

9. Referring to Clause 2-Ga of the said circular, learned counsel has argued that if any teacher working in the approved school, joins in any other unapproved school and the approval is given after his joining then the break in service cannot be condoned. Since, the date of joining of the petitioner in the second school was on 01.10.1966 and on that date, the approval was not granted to the school and the same was granted with effect *vide* letter, dated 11.02.1967, the petitioner is not entitled for continuity in service from 1960 and his claim has rightly been rejected by the impugned order at *Annexure 1*.



10. The argument of the learned counsel is fallacious and is not acceptable to this Court for the reason that the approval to school at Chakbharo i.e., second school in which the petitioner joined on 01.10.1966, was given with effect from 01.01.1966 *vide* letter, dated 11.02.1967, therefore, on the date of joining of the petitioner in the said school, it can be said that the school in question was having approval. In similar manner, the respondent is not disputing the date of approval of the first school at Kasnagar with effect from 01.01.1960 for which the necessary letter was issued on 29.10.1960 granting approval with retrospective effect. The letter of approval of the first school was issued on 29.10.1960 granting approval with effect from 01.01.1960. In the like manner, the letter of approval of the second school was issued on 11.02.1967 granting approval with effect from 01.01.1966.

11. Considering the aforesaid discussion and relevant circular of the government, along with *Annexure 7* by which the continuity of the services of the petitioner has been taken into account by the respondent/authority in its office order, dated 12.08.1983, and the service book available on record, I find that the respondents are obliged to count service of the petitioner with effect from 21.03.1960.



12. In the result, the impugned order, bearing letter no. 852, dated 25.03.2015, at *Annexure I*, is set aside. Respondent No. 3/Director, Secondary Education, is directed to consider the claim of the petitioner for second time bound promotion on taking into account the date of joining of the petitioner with effect from 21.03.1960. The required decision must be taken within a period of three months. It is needless to say that if the petitioner is found entitled for time bound promotion, the consequential benefits shall be paid to the petitioner within a period of one month from the date of the final decision taken by the concerned authority.

13. The writ application stands allowed to the extent indicated above.

(Anil Kumar Sinha, J)

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