

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.68 of 2023

In
Letters Patent Appeal No.525 of 2018

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Mahendra Thakur S/o late Rup Narain Thakur, resident of Mohalla- Matri Mandir, Indira Colony, East of Alalpatti, P.O. DMC Campus, P.S. Bahadurpur, District- Darbhanga, presently Resident of Bajjani Thakur Tola, Puraini, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner cum Secretary, Department of Primary Secondary and Mass education, Govt. of Bihar, Patna.
3. The Director, Primary Education Bihar, Patna.
4. The Commissioner Darbhanga.
5. The Collector cum Chairman of Establishment Committee, Darbhanga.
6. The Regional Deputy Director Education, Darbhanga.
7. The District Superintendent of Education, Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Amarendra Narayan, Advocate Mr. Deepak Kumar, Advocate
For the Opposite Party/s :		Mr.Sarvesh Kumar Singh, AAG 13 Mr. Ravi Kumar, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 08-10-2025 Heard learned counsel for the review-petitioner and learned counsel for the State in the matter of limitation as well as admission.

2. Learned counsel for the petitioner submits that there is some delay in filing of the review application for the reasons stated in the application seeking condonation of delay. It is stated



that the petitioner had moved before the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.15243 of 2021 for setting aside the judgment dated 21.01.2019 passed by the Hon'ble Division Bench in LPA No.525 of 2018. The said Special Leave Petition came to be considered on 17.05.2022. The Hon'ble Supreme Court allowed the petitioner to withdraw the Special Leave Petition with liberty to file review before this Court.

3. It is submitted that the information with regard to the withdrawal of the Special Leave Petition was not given to the petitioner for a quite long time. The petitioner came to know about it only after he enquired about the status of the Special Leave Petition from the Advocate clerk in the month of January, 2023. Thereafter, steps were taken to file the present review application.

4. Since there is no opposition to the application seeking condonation of delay, we condone the delay.

5. Learned counsel for the petitioner has pressed the review petition. It is submitted that the petitioner having obtained the degree of B.A. in 1976 and there being sanctioned vacant post of B.A. trained/headmaster should have got scale of B.A. trained and post of headmaster against the vacancy of 1978 but he was not given the said scale. He was at serial no.1 against the vacancy of 1978, however, he was given B.A. trained (Arts) scale vide order issued on 24.11.1995. Vide order of 1995 notional promotion was



granted to the petitioner from the year 1988, without any monetary benefit. The petitioner superannuated on 30.11.2001 as In-charge Headmaster, Adarsh Middle School, Laheriasarai. The petitioner had served as Headmaster for about six years i.e. from 1995 to 2001, for this period the petitioner was given his salary and other emoluments for the post of the Headmaster but he would have been entitled for the salary and emoluments for the said post with effect from the year 1988 when the notional promotion was given to the petitioner.

6. Learned counsel submits that initially the petitioner raised his grievance before the Commissioner, Darbhanga by filing Appeal No.11 of 1998, on dismissal of the said appeal, the petitioner moved this Court in CWJC No.8545 of 2001 (Annexure-2) seeking quashing of the order of the Commissioner, Darbhanga and grant of benefits with effect from the date the petitioner was granted notional promotion to the B.A. trained (Arts) scale. In the writ petition no counter affidavit came, still the learned Single Judge of this Court dismissed the writ petition. The said order of the Commissioner was set aside and the matter was remanded for fresh consideration.

7. It is submitted that once again the appeal preferred by the petitioner was rejected by the Commissioner vide Annexure-3 to the review application whereafter the petitioner moved this



Court in CWJC No.17761 of 2008. A learned Single Judge of this Court considered the writ application but held that if the person has not actually discharged the functions of the post held by him, he would not be entitled to the salary for such higher post. The learned Writ Court held that in the present case, there being no dispute that till 1995 the petitioner was not having been actually promoted to the scale of Graduate Trained, was entitled to such scale only from the date he actually started performing his duty as a Graduate Trained Teacher. The learned Writ Court applied the theory of 'no work no pay'. Further, the learned Writ Court held that the stand of the petitioner that the previous order has been reiterated by the Divisional Commissioner could not carry much force for the reason that the background of the same has been mentioned in the order which states that such promotion could not be given to the petitioner as the posts which were available were of the reserved category and the petitioner being in the general category was not eligible for such promotion to those reserved post.

8. It is further submitted that in the Intra-court appeal, a Hon'ble Division Bench of this Court dismissed LPA No.525 of 2018. The Hon'ble Division Bench refused to interfere with the judgment of the learned Writ Court firstly on the ground that the appellant had not actually functioned on the post of Headmaster



prior to 1995 and the order of promotion dated 24th November, 1995 is in respect of a large number of such teachers who are similarly placed as the appellant but there was nothing on the record to indicate that any differential treatment has been given to the appellant so as to attract the provisions of Article 14 of the Constitution of India.

9. While making his submissions, learned counsel has relied upon a Division Bench judgment of this Court in the case of **Dr. Paras Nath Prasad vs. The State of Bihar and Others** reported in **1990 (2) PLJR 248** and a learned Single Bench judgment in the case of **Madhu Sudan Prasad vs. The State of Bihar and Others** reported in **2012 (3) PLJR 55**. It is submitted that on going through the aforementioned judgments, it would be found that the petitioner must be held entitled for the salary and other emoluments attached to the said post with effect from the date the petitioner has been granted the notional promotion.

10. On the other hand, learned counsel for the State submits that the learned Single Judge as well as the Hon'ble Division Bench of this Court has considered all aspects of the matter and have passed the reasoned judgments which were sought to be assailed before the Hon'ble Supreme Court in the Special Leave Petition but the Special Leave Petition was withdrawn. So far as the scope of review jurisdiction is concerned, the petitioner



would be obliged to demonstrate that there is any error apparent on the face of the record. It is well settled that in review jurisdiction, this Court would not sit in appeal over the judgment of the learned coordinate Bench.

11. We have heard learned counsel for the petitioner as well as the State and have also gone through the entire materials on the record. Basically the claim of the petitioner has failed both before the learned Writ Court as well as before the Appellate Court on the ground that the petitioner had never discharged the duties of the post of the Headmaster prior to the year 1995 when the promotion order was issued. In fact, the learned Single Judge has gone on to record that the petitioner could not have been given actual promotion prior to the year 1995 because there was no post available for him in the general category. The another ground which has been considered may be found in the judgment of the Hon'ble Division Bench where it has been considered that large number of persons were given promotion vide order of promotion dated 24th November, 1995 and all of them have been treated similarly. Thus, the petitioner was not able to demonstrate that it was a case of any differential treatment so as to attract the provisions of Article 14 of the Constitution of India.

12. On the strength of the judgments cited at the Bar, learned counsel for the petitioner has only attempted to



demonstrate before us that perhaps the views expressed earlier by the Hon’ble Division Bench is not in consonance with the judgment in the case of **Dr. Parasnath Prasad** (supra).

13. We are afraid that in review jurisdiction, we cannot sit in appeal over the judgment of the Hon’ble Division Bench. No error apparent on the face of the record has been shown to this Court.

14. In such circumstance, we find no merit in the review application. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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