

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1383 of 2017

In
Civil Writ Jurisdiction Case No.14787 of 2014

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Vijay Kumar Prasad Son of Late Ram Julum Singh, resident of village –
Muroul, PS – Sakra, District - Muzaffarpur

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The Senior Accounts Officer, Office of Accountant General, Bihar, Patna.
5. The District Officer (Collector), Muzaffarpur.
6. The District Programme Officer Sthapana, Education, Muzaffarpur.
7. The Head Master, Govt. of Middle School Etha, Anchal – Muroul,
Muzaffarpur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ashhar Mustafa, Advocate Mr. Abu Nasar, Advocate Mrs. Anita Kumari, Advocate
For the Respondent/s	:	Mr.Shashi Shekhar Tiwari, AC to Aag-15
For the State	:	Mr. Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-05-2025

Appellant has assailed the order of the learned Single Judge dated 04.08.2017 passed in CWJC No. 14787 of 2014. The appellant while working as teacher, he was promoted to the post of Headmaster on 04.09.2008 in the scale of pay of Rs. 7,500-12,000/- and he has attained age of superannuation and retired from the service on 28.02.2010. His retiral benefits have not been settled with reference to the last pay drawn. His



last pay drawn is stated to be a sum of Rs. 27,170/-. On the other hand, his last pay has been treated as Rs. 25,930/-. The reason for fixing a sum of Rs. 25,930/- is in the guise of rectification of his promotion order dated 04.09.2008 to the extent that he was not due for promotion on 04.09.2008. He is entitled to promotion only after 12 years of service.

2. Having regard to the fact that he has discharged the duties of the post of Headmaster and retired as a Headmaster on 28.02.2010 with last pay a sum of Rs. 27,170/-. Bihar Pension Rules provides for fixation of pension only with reference to last pay drawn. The last pay drawn of Rs. 27,170/- cannot be altered to Rs. 25,930/- unless and until promotion order to the post of Headmaster has been withdrawn or cancelled or modified. In other words, appellant should have been reverted to the feeder cadre to the post of Headmaster, those actions have not been taken. That apart he has discharged the duties of promotional post. In the absence of such action, the respondents cannot straightaway fix the last pay drawn as Rs. 25,930/- when he has drawn a sum of Rs. 27,170/-.

3. Promotion order has attained finality and it has not been disturbed by the authorities or any other forum. In this regard, it is necessary to take note of a Court decision in the case



of **Smith vs. East Ellore Rural District Council** reported in **1956 AC 736 at 769**, Lord Redcliffe observed:

“An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

Prof. Wade Administrative Law 6th Ed. P. 352 (1918-2004) a great jurist of yester decades goes one step further and writes:

“.....the principle must be equally true even where the ‘brand’ of invalidity’ is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the Court... The truth of the matter is that the Court will invalidate an order only if ‘the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff’s lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the ‘void’ order remains effective and is, in reality, valid...”



This view came to be reiterated by the Apex Court in **Prahlad Raut vs. AIIMS** reported in **(2021) 14 SCC 472**.

4. These crucial materials have not been taken note of by the learned Single Judge to the extent that appellant has discharged the duties of the Headmaster post till 28.02.2010 the date on which he attained the age of superannuation and retired from service while drawing last pay at Rs. 27,170/-. Bihar Pension Rules is a statutory provision which provides that pension is required to be fixed only with reference to last pay drawn. And so also, there is no withdrawal or reversion to the feeder cadre to that of Headmaster post, therefore, the learned Single Judge has committed error in rejecting the appellant's claim.

5. In the light of these facts and circumstances the appellant has made out a case to the extent his retiral benefits and pension is required to be determined with reference to last pay drawn at Rs. 27,170/-. In this regard, the concerned official-respondents are hereby directed to take note of the same and redetermine the retiral benefits and pension with reference to last pay drawn at Rs. 27,170/- and extend difference of amount within a period of three months from the date of receipt of this order.



6. In this regard, necessary calculation-sheet shall be prepared and a copy of the same shall be provided to the petitioner. If this order is not complied by the official-respondents, appellant is entitled to litigation cost and it is quantified at Rs. 20,000/-.

7. The order of the learned Single Judge dated 04.08.2017 passed in CWJC No. 14787 of 2014 stands set aside. Accordingly, the present LPA No. 1383 of 2017 is allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.05.2025.
Transmission Date	

