
(1999) 09 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 8757 of 1998

Kamta Prasad Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Citation : (2000) 1 PLJR 421

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Ganesh Prasad Singh and Bishnu Kant Dubey, for the Appellant;
Nand Lal Kumar Singh for the State and Mr. Raj Ballabh Pd. Yadav for the A.G.,
for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioner is aggrieved by denial of continuity of his service with effect from 1.9.1959 to 28.2.1997 and consequently a direction to the Respondents has been sought to re-fix his pension which was fixed by the Accountant General's office PPO No. 250634 without counting the said period and treating the breakage in service with effect from 7.2.1974 to 8.1.1975. In short, the relevant facts are that the petitioner was initially appointed as Assistant teacher in Shankar High School, Amarpuri on 1.9.1959, which was recognised School by the Department of Education vide order dated 1.7.1955. He discharged his duty continuously without any breakage in his service up to 7.2.1974. Later he was appointed as Headmaster in High School, Telmar in the district of Nalanda to which permission was granted for establishment by the then Secondary Education Board vide office order, contained in memo no. 4405-4408 dated 7.12.73. He joined in the said School in the afternoon of 7.2.1974. It is, however, further stated that the Managing Committee vide its resolution no. 3 dated 18.1.1975 sanctioned the leave of the petitioner without pay, which is also incorporated in the service book of the petitioner, which was duly verified and attested by the competent authority. High

School, Telmar was granted permanent recognition by the then Bihar School Secondary Education Board vide office order contained in memo no. 141-47 dated 9.1.1975 along with teaching and non-teaching staff including the petitioner as Headmaster (Annexure-2). The School was taken over with effect from 2.10.1980 and thereafter the petitioner was transferred to Vishwanath High School, Chandos on 22.9.93 and later to the High School, Paliganj in the district of Patna from where he superannuated on 28.2.1997. It is, thus, claimed that the petitioner is entitled for continuity in Government Service from the date of initial appointment i.e. 2.9.1959 and accordingly it is claimed that he discharged total service for 37 years 5 months, but vide aforementioned PPO dated 7.7.1997 his pension has been fixed at Rs. 1,466/- instead of Rs. 2,199/- by counting his total period of service from 9.1.1975.

2. No counter affidavit has been filed on behalf of the State. However, on account of the stand taken in the counter affidavit filed on behalf of Union of India, Accountant General and Senior Accounts Officer-Respondent nos. 2, 3 & 4, the period of past service with effect from 1.9.1959 to 8.1.1975 cannot be taken into qualifying service on the ground that the petitioner was a teacher in recognised School, but left his School to join as Headmaster in unrecognised School on 7.2.1974 and the School in which the petitioner joined was given recognition with effect from 9.1.1975. As such, according to them as per the provisions laid down in sub-para (c) of Para 2 in Finance Department letter no. 636 dated 18.7.1992, the period with effect from 7.2.1974 to 8.1.1975 will be treated as break in service, and his date of commencement of service will be from 9.1.1975. It is further stated that a reference for condonation of period has been made to the Deputy Secretary, Primary and Adult Education, Bihar, Patna vide letter no. Pen-2-1014-16 dated 17.12.1997.

3. Mr. Ganesh Prasad Singh, learned Senior Counsel appearing for the petitioner contended that as per the Government instruction, contained in letter no. 25511-710 dated 12.8.1978 issued by the Secretary, Bihar Secondary Education Board, Patna to all Regional Directors of Education, Principal, Teacher Training College, Deoghar and Samastipur, the petitioner was entitled to get the benefit of continuity of service at least from 7.2.1974 when he joined in the High School, Telmar as Headmaster, which was granted permission for establishment on 7.12.73 vide Annexure-1. In support of this, learned counsel placed reliance on paragraph 13 of the said Government instructions, which is quoted hereunder for ready reference :

4. According to the said provision, the date of appointment of a teacher in the School where he is appointed is to be treated from the date of grant of permission for establishment of the said school and their fixation of pay is to be done with effect from the date of grant of permission, but in case the period between the date of grant of permission and grant of permanent recognition exceeds beyond two years, maximum benefits which is to be granted in that regard is for two annual increments. It is further clarified that the actual

payment to such teachers and employees are to be made only with effect from the date of grant of permanent recognition and not with effect from the date of grant of permission. This Court fails to appreciate as to how the said clause is of any help to the petitioner. The aforementioned Government instruction was only with respect to fixation of pay of the teaching and non-teaching staff of the Non-Government High Schools.

5. Thus, it is evident that for the purpose of fixation of pay the date of appointment of the teachers in the said School has been treated to be the date of grant of permission for its establishment. This, in my opinion, will apply only to the teachers who were already in employment on the date of grant of permission i.e. 7.12.1973. In the present case, the petitioner admittedly joined the School on 7.2.1974 and thus in his case the said provision for treating the date of appointment as the date on which permission was granted is not at all applicable. For the purpose of pension to the teachers and non-teaching staff of the nationalised School, the Government took resolution, which has been circulated vide Memo No. 12/98-033/91 636/Patna dated 18.7.1992 by the Special Officer-cum-Joint Secretary, Human Resources Development Department, Bihar (Annexure-13). According to the sub-clause "ga" of clause 2 of the said Government resolution when a teacher during his service period in a recognised Secondary School joins in a non-recognised Government Secondary School to which recognition is granted after his joining then in such case break in his service is not to be condoned and his previous period of service shall not be pensionable. Admittedly, the earlier School from which the petitioner joined as Headmaster in Telmar School was a recognised Secondary School and the High School, Telmar was a non-recognised School, and further the recognition of the said School was granted by the then Bihar Secondary Education Board vide office order dated 9.1.1975 (Annexure-2) Thus, it has rightly been submitted by the learned Additional Standing Counsel appearing for the Accountant General that the period when the petitioner joined the present School on 7.2.1974 to 9.1.1975 when the recognition was granted to the said School cannot be held to be pensionable and as such the service of the petitioner has rightly been counted for the purpose of grant of pension from 9.1.1975. Accordingly, this Court does not find any merit in this writ petition and the writ petition is, thus, summarily dismissed