

**(2008) 01 PAT CK 0094**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 1059 of 1999

Lakshmi Narayan Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 25-01-2008

**Acts Referred:**

**Citation :** (2008) 56 BLJR 1452 : (2008) 2 PLJR 639

**Hon'ble Judges :** Sudhir Kumar Katriar, J; Kishore K. Mandal, J

**Bench :** Division Bench

**Advocate :** Ganesh Prasad Singh, S. Parasmani and Srikant Pandey, Kameshwar Prasad Gupta, No. 5, for the Appellant; Chakradhari Sharan Singh, for the Respondent

**Final Decision :** Dismissed

## Judgement

Sudhir Kumar Katriar and Kishore K. Mandal, JJ.—The petitioner of C.W.J.C. No. 8860 of 1998 has preferred this appeal in terms of Clause 10 of the Letters Patent of the Patna High Court and is aggrieved by the order dated 17.8.1999, whereby the writ petition was dismissed and it has been held that in view of the petitioner's discharge on 21.2.1972, from service from a privately managed school governed by its Managing Committee, he is not entitled to continuity of service for the period he has rendered in the private school. We shall go by the description of the parties occurring in the writ petition.

2. A brief summary of facts is essential for disposal of the issues involved in this appeal. The writ petitioner had joined High School, Maranchi, Patna, a privately managed School, on 12.7.1954. He became officiating Headmaster on 25.3.1956, and claims to have been confirmed on 30.10.1959. The petitioner was suspended on 14.7.1970, and discharged from service on 21.2.1972. The petitioner claims to have preferred an appeal against the order of discharge. The petitioner thereafter joined Ayodhya High School (Gyan Bharti), Begusarai, on 22.2.1972, another private school governed by its Managing Committee. It further appears that the said Ayodhya High School received approval for

establishment by the State Government on 2.3.1976, and was taken over on 2.10.1980. The service of the petitioner was also taken over, he became a Government servant, and ultimately superannuated from the services of the Bihar Government. The issue relating to grant of post-retirement benefits occurred, and the Accountant General took the stand that he was not entitled to the benefit of continuity of service with effect from 12.7.1954, leading to the writ petition which has been dismissed.

3. While assailing the validity of the impugned order, learned Counsel for the writ petitioner (appellant herein) submits that the order of the Director of Education passed in obedience of the order dated 15.3.1982, in C.W.J.C. No. 3669 of 1981 (Sri Ram Udgar Singh v. The State of Bihar and Ors.), a composite order was passed whereby his order of discharge from service was set aside. He is, therefore, entitled to the benefit of continuity of service. He relies on the judgment of a learned Single Judge of this Court, reported in Dhrub Roy Vs. The State of Bihar and Others, . He next submits that even if there was a short break of service, the same may be condoned.

4. Learned Counsel for the Accountant General has submitted that the scope of the order of the Director was determined by the aforesaid order dated 15.3.1982, passed in C.W.J.C. No. 3669 of 1981 and, therefore, any order beyond the same must be treated to be invalid. He further submits that the order of dismissal was not set aside. He also submits that the petitioner is entitled to post-retirement benefits counting the same from 2.3.1976.

Learned Counsel for respondent No. 5 to 7 has supported the stand taken by learned Counsel for respondent Nos. 1 to 4.

5. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The admitted position is that the petitioner had for sometime served High School, Maranchi, which was a private school managed by its Managing Committee, and was discharged from service with effect from 21.2.1972. The petitioner has not placed before us any material to satisfy that he preferred an appeal against the order. If yes, then before which authority and under which provision of law. In view of the materials placed before us, we are of the view that the appellant did not challenge the order of discharge and the same attained finality.

6. The second important aspect of the matter is that, soon after the petitioner was discharged from service from Maranchi High School, one Ram Udgar Singh was made Acting Headmaster by the Managing Committee. An issue relating to his status as Headmaster and payment of salary had come up before this Court in C.W.J.C. No. 3669 of 1981.

The present petitioner was respondent No. 5 therein and had chosen to abstain from the proceeding. The same was disposed of by order dated 15.3.1982, whereby the Director of Secondary Education was directed to pass a final order with respect to the entitlement of Ram Udgar Singh. Consequently the Director

disposed of the matter by his order dated 12.3.1985 (Annexure-1), wherein he made certain observations incidentally relating to the present petitioner also. It is relevant to reproduce hereinbelow the relevant portion of the said order dated 15.3.1982, whereby the matter was remitted to the Director and determines the scope of the decision to be passed by the Director after remand:

...This application is accordingly disposed of. The Director shall also pass the necessary orders in respect of payment of pay of Headmaster to the petitioner (Ram Udgar Singh) if on the materials he is satisfied that the petitioner has been acting as the Headmaster of the said school in accordance with law....

7. It is thus manifest that the Director was required to dispose of a very limited issue which had not the remotest connection with the present petitioner's discharge from service. This issue was dealt with by the learned writ court also and the relevant portion of the order is reproduced hereinbelow for the facility of quick reference:

There is nothing in the order of the Director-cum-Additional Secretary, contained in Annexure-1, to indicate that the appeal was heard and considered by the Director as an appellate authority. On the contrary, in the said order it is mentioned that the grievance of the petitioner was not against his discharge from service of the earlier school. His grievance was for grant of continuity of service. The Director held that in the light of the order of this Court, the appeal of the petitioner itself had become infructuous. The validity of the said order was never challenged by the petitioner. However, in the said order the Director allowed the continuity of service to the petitioner without financial benefit. By no stretch of imagination this order can be said to be a quasi-judicial order which would bind the authority. Learned Counsel for the petitioner has failed to show any law under which the Director could have allowed the continuity of service of the petitioner without setting aside the order of his discharge from service in the earlier school, namely, Maranchi High School.

8. In view of the materials available on record, it is evident that the petitioner's order of dismissal/discharge from service on 21.2.1972 had attained finality, whereafter he joined another privately managed school which had received the approval of establishment from the State Government on 2.3.1976. Accordingly, we agree with the discussion and the conclusion reached by the learned writ court that the Accountant General took the correct stand in denying to the petitioner any benefit prior to 2.3.1976.

9. There is no merit in this appeal and is accordingly dismissed.