

**(2005) 07 PAT CK 0036**  
**In the Patna High Court**

Shivji Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 22-07-2005

**Acts Referred:**

**Citation :** (2005) 07 PAT CK 0036

**Final Decision :** Dismissed

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## **Judgement**

Navin Sinha, J.—Heard learned Counsel for the petitioner and the learned Counsel for the State.

A counter-affidavit has also been filed on behalf of the respondents. The Court proceeds to dispose of this writ application at the stage of admission.

2. The relief sought for in the present writ application is for appointment to the post of Headmaster, The Court would consider it necessary to set out facts only to the extent necessary for the purpose of the present controversy.

3. The petitioner, an Assistant Teacher, joined Sakhe Ramdas High School in the district of Gopalganj on 1.1.1978 as the founder Headmaster. On 12.12.1981 the School was granted recognition by the State Government. On 27.7.1983 the school was taken over by the Government.

4. Learned Counsel for the petitioner does not dispute that the petitioner had earlier preferred CWJC No. 6376 of 1995 assailing the order dated 2.8.1995 issued by the Director, Secondary Education, rejecting the claim of the petitioner for appointment to the post of a regular Headmaster on the basis of a Government circular dated 30.11.1981. The said communication dated 2.8.1995 would be at Annexure-6 to the present writ application. Dismissal of the writ application by order dated 22.11.1994 was then questioned by the petitioner in LPA No. 1727/95 which by order dated 1.10.1996 upheld the order passed in the writ application that the petitioner was not qualified to hold the post of Headmaster as he did not possess the requisite ten years of teaching experience. A SLP was then preferred by the petitioner before the Supreme Court which

came to be dismissed on the ground of limitation. These facts would be mentioned in the writ application itself. The order dated 2.8.1995 at Annexure-6 as aforesaid, would itself record that the petitioner would have eight years seven months and seven days of experience.

5. Learned Counsel for the petitioner would submit that in Civil Appeal No. 4038 of 1988 preferred by certain other persons whose claim for appointment to the post of Headmaster had been rejected on the ground that they did not possess the requisite experience of seven years for appointment on the post of Headmaster, by its judgment dated 7.1.1988 considering that under a circular of 26.11.1986, the requisite experience for schools, such as the present, taken over after 2.10.1980 was seven years of teaching experience had directed the respondents to consider the cases of the petitioners therein. Thus, the denial of relief to the petitioner in the earlier litigation on the ground of non-completion of ten years of service was contrary to law and required interference by this Court in the present proceedings.

6. The circular of 26.11.1986 which is sought to be urged as a fresh cause of action was clearly available to the petitioner in his earlier round of litigation, which he did not consider necessary to invoke.

7. This Court in the facts and circumstances of the case would find that the claim of the petitioner had been rejected by the writ Court, LPA Court as also before the Supreme Court albeit on the ground of limitation. This Court would therefore hold that insofar as the petitioner be concerned, the litigation inter parties attained finality. The issue whether the petitioner would be permitted to reopen the same on the basis of subsequent judgment in a similar matter would stand settled by the Supreme Court by the judgment in the case of Md. Aziz Alam and Others Vs. Union of India (UOI) and Others, This Court would do no better than to quote paragraphs No. 1 and 2 of the said judgment as under:

1. This appeal is directed against an order of the "Central Administrative Tribunal, Calcutta Bench, dismissing the claim of the appellants. The appellants applied for certain posts under the Railway Administration in the year 1984 and took up the written examination as well as the viva voce examination in the year 1985. But as the results were not declared and no merit list was published, they approached the Tribunal by filing OA No. 1004 of 1988. That application before the Tribunal was dismissed on the ground that the appellants did not approach the Tribunal within the period stipulated under the act. Against the said order, the appellants approached this Court by filing SLR No. 1707 1990 and this Court by order dated 3.12.1990 refused to grant special leave and, therefore, so far as the appellants are concerned, the matter reached a finality. It transpires that some other similarly situated persons like the appellants had filed application before the Tribunal in the year 1989 and that application was allowed by the Tribunal with certain observations in the year 1990. Because of such order of the Tribunal, the appellants were emboldened to file a fresh application before the Tribunal which was registered as OA No. 899 of 1992 seeking the relief that the benefits

which have been given to the similarly situated persons pursuant to the order of the Tribunal dated 4.12.1990 should be given to them. This application of the Appellants which was registered as OA No. 899 of 1991 was distressed by the Tribunal by the impugned order on the ground of limitation and hence the present appeal.

8. It is contended by the learned Counsel for the appellants that the disposal of OA No 327 1989 by the Tribunal filed by some other applicants gives a fresh cause of action to these appellants as they were similarly situated. and therefore, the Tribunal committed error in refusing the relief sought for on the ground of limitation. According to the learned Counsel, there is no justifiable reason to deny the relief to these appellants when similar relief has been given to some others who also did take the recruitment test alongwith the appellants in the year 1985 as already stated. We are unable to persuade ourselves to agree with this contention raised by the learned Counsel appearing for the appellants, inasmuch as the appellants did approach the Tribunal way back in the year 1988 and being unsuccessful there, did approach this Court and thin Court declined to grant special leave in the year 1990 and, therefore, so far as the question of appellants" right of consideration to the post applied for has become final and would not be reopened merely on the ground that in some other matters filed at the behest of some similarly situated persons, the Tribunal or a Court has granted some relief. That apart, more than 15 years have elapsed from the date on which the appellants claim to have taken the test in question."

9. The law would thus be clear that the subsequent judgment of the Supreme Court in Civil Appeal No. 4038 of 1988, as aforesaid, could not furnish a fresh ground or cause of action to the writ petitioner in the peculiar facts and circumstances of the case.

The writ application is therefore dismissed.

No costs.