

(2018) 02 PAT CK 0094

In the Patna High Court

Case No : Letters Patent Appeal No. 318, 320 Of 2015 In Civil Writ Jurisdiction
Case No. 7159 Of 2008

State Of Bihar Through Secretary Secondary Education And
Ors

APPELLANT

Vs

Rabindra Prasad Sinha And Ors

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

Bihar Secondary Education Board Act, 1976 — Section 2(?)
Bihar Pension Rules, 1950 — Rule 101, 101(b), 103, 105

Citation : (2019) 2 PLJR 628

Hon'ble Judges : Jyoti Saran, J; Chakradhari Sharan Singh, J

Bench : Division Bench

Advocate : Binod Kumar, Neeraj Kumar, S.K. Lal, P.K. Lal, Satyavrat Verma,
Ranjan Kumar

Final Decision : Dismissed

Judgement

1. In both the appeal, under the Letters Patent of the Patna High Court, preferred by the State of Bihar and the State of Jharkhand, the judgment and

order, dated 23.06.2014, passed, by a learned Single Judge of this Court, in CWJC No. 7159 of 2008, is under challenge and, therefore, both these intra

Court appeals, have been heard together and are being disposed of by the present common judgment and order.

2. We have heard Mr. Binod Kumar, learned Assistant Counsel to Government Pleader No. 10, for the appellants, in LPA No. 320 of 2015, and Mr.

Satyabrat Verma, learned Counsel, for the appellants, in LPA No. 318 of 2015. We have also heard Mr. S. K. Lal, learned Counsel, for the sole

private respondent, in both the appeals, and Mr. Ranjan Kumar, learned Counsel, appearing on behalf of the Accountant General, in LPA No. 318 of

2015.

3. The learned Single Judge, by the impugned judgment and order, has allowed writ application, filed on behalf of the private respondent, directing the

appellants, State of Bihar and State of Jharkhand, to count the entire service period of the respondent, from 25.03.1954 to 31.03.1997, for his

pensionary benefits and ensure payment of his entire dues accordingly within a period of three months.

4. There are certain undisputed facts, which need to be taken note of, at the very outset. The respondent had joined as an Assistant Teacher, in M. C.

High School, Gidhour, Jamui, on 25.03.1954, where he served till 17.01.1979. The said school was an approved school since before the date of his

joining. He, thereafter, got an opportunity to work as Headmaster of one Bihari Lal Sharaf High School, Rikhia, Deoghar. After re-organization of the

State of Bihar, the said High School has fallen in the territory of State of Jharkhand. It appears that after having submitted his resignation, he joined

the said Bihari Lal Sharaf High School, Rikhia, Deoghar, which was not a recognized school within the meaning of Section 2 (>) of Bihar Secondary

Education Board Act, 1976. The School was, however, subsequently came to be recognized by the Bihar Secondary Education Board, vide Memo No.

21430-36, dated 13.11.1979, with effect from 01.01.1979. The respondent was transferred from one recognized school to another thereafter till the

date of his superannuation on 31.03.1997.

5. On the ground that he had not worked in a recognized school from the date (17.01.1979) of submission of his resignation, till Bihari Lal Sharaf High

School, Rikhia, Deoghar, came to be recognized, the appellants treated the said period to be break in service of the respondent and, accordingly, did

not count the period, from 25.03.1954 to 17.01.1979, for the purpose of grant of pensionary benefits to the respondent. This led to filing of the writ

application, being CWJC No. 7159 of 2008, seeking a direction to the State respondents (appellants herein) to count the said service since 25.03.1954

to 31.03.1997 as continuous service, for the purpose of computation and fixation of his post-retiral benefits without treating any break in service. The

said relief, sought by the writ petitioner, has been granted by the learned Single Judge, by the impugned judgment and order.

6. Before we consider the grounds taken on behalf of the appellants to assail the

impugned judgment and order, it would be apt to take note of Rules

101, 103 and 105 of the Bihar Pension Rules, 1950. Let there be no scope of doubt that the Bihar Pension Rules, 1950, govern the pension and other retiral benefits of the respondent and similarly situated persons.

7. Rule 101 of the Bihar Pension Rules, 1950, contemplates forfeiture of past service in case of resignation of the public service. Sub-Rule (b) of Rule

101 of the Bihar Pension Rules, 1950, however, provides that resignation of an appointment with the approval of the appointing authority to take up

any appointment, service in which counts, is not a resignation of the public service. Rule 103 of the Rules contemplates forfeiture of past service on

account of interruptions except in the circumstances specified therein. Rule 105 of the Bihar Pension Rules, 1950, on the other hand, confers upon the

competent authority power to condone an interruption in service.

8. It appears that through Finance Department's Resolution No. 3014 (fo), dated 31.07.1980, a decision was taken and subsequently notified by

the State Government that interruption of service in case of teachers occasioned by (i) resignation, (ii) dismissal or transfer from service, and (iii)

break in service caused by participation in strike, will lead to break in service. It was further stipulated that break in service of teachers, as a result of

any other circumstance or factor shall automatically be treated to be condoned. The Finance Department, thereafter, came out with another resolution,

being Resolution No. 581 (fo), dated 15.01.1982, modifying the previous resolution, dated 31.07.1980, and whereby the word "resignation", as

occurring in the said resolution, dated 31.07.1980, was deleted, meaning thereby that interruption in service of teachers caused by resignation which

would have earlier resulted into break in service, in view of the resolution, dated 15.01.1982, it would not lead to break in service. Nearly ten-and-a-

half years thereafter, the State Government came out with yet another resolution, dated 18.07.1992, modifying the earlier resolution, dated 15.01.1982,

prescribing that in case when a teacher joins an unrecognized, non-Governmental secondary school which gets recognition after the date of joining,

the break in service shall not be condoned and earlier period shall not be counted for pension.

9. The said resolution, dated 18.07.1992, with special reference to Clause (x) thereof, is the sole ground, which has been applied for denying the

respondent the continuity of his service since 25.03.1954 and that is the only ground on which the appellants seek to assail the impugned judgment and order of the learned Single Judge.

10. Clause (x) of the resolution, dated 18.07.1992, being at the core of the controversy, is being re-produced hereinbelow:-

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(Emphasis is added)

11. If translated into English, the said provision will read thus:-

â??If a teacher working in a recognized secondary school, joins any unrecognized non- Government secondary school during his service period,

which is recognized after his joining, in such matters, the break in service shall not be condoned and earlier service period not be

pensionable.â??

(Emphasis is added)

12. On conjoint appreciation of the facts and circumstances in respect of the respondentâ??s joining as Headmaster of Bihari Lal Sharaf High

School, Rikhia, Deoghar, on 17.01.1979, when, admittedly, the school was not recognized and the said Government decision on the point of

condonation of interruption in service, particularly, Clause (x) of the resolution, dated 18.07.1992, in our view, following are the two questions, which

have emerged for consideration in present appeal:-

(i) Whether with the coming into force of resolution, dated 15.01.1982, and consequent condonation of interruption of service of teachers even in case

of resignation, a right accrued to the writ petitioner of claiming continuity of service and once such right accrued, whether such right can be said to

have been taken away by subsequent resolution, dated 18.07.1992?

(ii) Whether the resolution, dated 18.07.1992, can be applied retrospectively?

13. Learned Counsel representing the appellants have vehemently argued that the said resolution, dated 18.07.1992, has retrospective effect inasmuch

as it intends to modify the provisions contained in the earlier resolution, dated 15.01.1982. It has been submitted, with reference to Clause (x) of the

resolution, dated 18.07.1992, that it is evident from the language that the State Government wanted to deny the benefit of condonation of interruption in

service in case of resignation of public service. It has also been argued that no right accrued to the respondent in terms of the resolution, dated

15.01.1982, which could not have been taken away by way of subsequent modification, as done through resolution, dated 18.07.1992.

14. It is being argued that the learned Single Judge has fallen in error in holding that the right, which accrued to the respondent with the implementation

of the resolution, dated 15.01.1982, could not be taken away by subsequent resolution, dated 18.07.1992.

15. Mr. S. K. Lal, learned Counsel, appearing on behalf of the sole private respondent/writ petitioner, in both the appeals, has, however, supported the

judgment and order under appeal and has submitted that considering the language of Clause (x) of the resolution, dated 18.07.1992, it cannot be said to

be having retrospective effect.

16. On examining all the three resolutions, as noticed above, dated 31.07.1980, 15.01.1982 and 18.07.1992, it is manifest that the said resolutions have

been issued in exercise of power under Rule 105 of the Bihar Pension Rules, 1950. Initially, interruption in service occasioned out of resignation of

public service could not be condoned in terms of resolution, dated 31.07.1980. The Government, however, subsequently, took a conscious decision to

condone break in service due to resignation also by coming out with resolution, dated 15.01.1982. Once the resolution, dated 15.01.1982, came into

effect, the break in service of the respondent, consequent upon his resignation of the earlier service, on 17.01.1979, stood condoned. The respondent,

as a consequence thereof, was required to be treated in continuous service, right from 25.03.1954, as on the date of issuance of the resolution, dated

15.01.1982. Once, the break in service stood condoned, in our view, the right accrued to the respondent, which could not be taken away by the

subsequent resolution, dated 18.07.1992. Such right, which accrued, could have been taken away only by way of valid legislation with provision for

retrospective operation, but not by way of any executive action.

17. Learned Counsel appearing on behalf of the private respondent/writ petitioner has rightly relied on the Single Bench decision of this Court, in the

case of Dhrub Roy and Another v. The State of Bihar and Others, reported in

2007 (1) PLJR 769, in support of his plea and record our agreement with the view taken in the said case.

18. On the question as to whether the resolution, dated 18.07.1992, could have retrospective effect, in our view, if the said resolution, dated

18.07.1992, is to be applied retrospectively, it will have anomalous situation. For instance, the said resolution, dated 18.07.1992, could, in no event, be

applied in the cases of persons, who attained the age of superannuation between 15.01.1982 and 18.07.1992, and who had availed the pensionary

benefits in accordance with the provisions contained in the resolution, dated 15.01.1982.

19. Secondly, the said resolution, dated 18.07.1992, does not contemplate that it shall have retrospective effect. It is, rather, clear from the language of

Clause (x) that the said provision are meant to have prospective effect only inasmuch as it does not refer to past transactions and only refers to the

future contingencies.

20. It is cardinal principle of interpretation that every statute, in the present case, notification, is prima facie prospective unless it is, by express

provision or necessary implication, declared to have retrospective operation. Further, the provisions, which affect the rights already accrued should not

be applied retrospectively in the absence of express provisions or necessary intendment. It is well recognized principle of statutory interpretation, as

has been held by the Supreme Court, that a statute should be interpreted so as to respect vested rights and a construction which affects vested rights

should never be adopted if the words are open for another construction. [See, Amireddy Rajagopala Rao and Others v. Amireddy Sitaramamma and

Others (AIR 1965 SC 1970)]

21. In view of the above, we do not find any infirmity, legal or factual, in the judgment and order of the learned Single Judge, under appeal. These

appeals have no merit and are, accordingly, dismissed.

22. However, there shall be no order as to costs.