

(2003) 02 PAT CK 0036
In the Patna High Court
Case No : L.P.A. No. 424/95

The State of Bihar and Others

APPELLANT

Vs

(sic)ishna Prasad

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Citation : (2003) 2 PLJR 662

Hon'ble Judges : Rlavi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : S.A. Inamdar Hussain and Shashi Bhushan Kumar, for the Appellant;
Rajendra Prasad Singh and Niranjan Kumar, for the Respondent

Final Decision : Allowed

Judgement

1. The admitted fact is that the Petitioner-Respondent was appointed as Asst. Teacher in Kishan Middle School, Shiv Nagar on 7.12.1970. He was untrained matriculate. The school was recognised on 25.7.1970. Subsequently, the school was nationalised with effect from 1.4.1976 vide Annexure-2. The services of the Petitioner-Respondent were not taken over. The Petitioner-Respondent was sent for training on 28.6.1976 vide Annexure-3 on stipend of Rs. 20/- per month. The result was published in December, 1980. The claim of the Petitioner-Respondent is that after completing training on 31.5.1978 he joined the school on 3.6.1978 and as such he is entitled for salary. He filed a petition claiming salary but nothing was paid and as such he filed C.W.J.C. No. 409/84. The said writ petition was disposed of on 2.2.1984 permitting the Petitioner to file a representation. The Petitioner-Respondent pursuant to the order filed representation but the representation was not disposed of and as such he filed C.W.J.C. No. 3392/84 for issuance of direction to the Respondents-Appellants to pay his salary of untrained I.A. scale with effect from 1.4.1976 and of trained I.A. scale from December, 1980. The said writ petition was allowed vide order dated 8.12.1994 which has been impugned in this Letters Patent Appeal.

2. Learned Counsel for the Petitioner-Respondent submitted that since he was

appointed in non-government school and was working and the school was nationalised with effect from 1.4.1976 and as such he was entitled to salary with effect from the date of taking over of the school. In support of his submission learned Counsel for the Petitioner-Respondent relied upon a Division Bench decision in the case of Rameshwar Pandey v. The State of Bihar and Ors. 1997 (1) P.L.J.R. 773 and submitted that Letters Patent Appeal is fit to be dismissed in view of the aforesaid decision. It appears from the aforesaid decision that claim was made for regulari-sation of services and for quashing of the order whereby his claim for regularisation was rejected. In the instant case there is no claim of regularisation rather the relief which was sought in the writ petition was that a direction be issued to the respond-ents-Appellants to pay salary. Therefore, it is obvious that the Division Bench decision as indicated above will not help the Petitioner-Respondent in the facts and circumstances of the case as there is nothing on the record to show that service of the Petitioner-Respondent was taken over. It is true that the District Superintendent of Education wrote to the Director, Primary Education for deciding the matter but as yet nothing has been brought on the record that any decision was taken with respect to taking over of service of the Petitioner-Respondent. Further more, regularisation is something else and payment of salary is something else. Unless a person is treated in the employment of the Government there is no question of payment of salary. It is evident from the material on record as discussed above that there is nothing on the record to show that service of the Petitioner-Respondent was taken over at any time or while the school was taken over. We find that the learned single Judge did not consider the aforesaid aspect of the matter nor any finding has been recorded that service of the Petitioner-Respondent was taken over and as such in our view the order impugned cannot be allowed to stand.

3. Accordingly, Letters Patent Appeal is allowed. The order impugned is hereby set aside.