

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.280 of 2021
In
Civil Writ Jurisdiction Case No.864 of 2020

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Magadh Division, Gaya.
4. The District Education Officer, Nawada.
5. The District Programme Officer (Establishment), Nawada.
6. The District Provident Fund Officer, Nawada.
7. The District Treasury Officer, Nawada.
8. The Accountant General, Bihar, Patna.

... .. Respondents-Appellant/s

Versus

Surendra Prasad Sinha, Son of Late Deoki Nandan Prasad, resident of Mohalla- Par Nawada, P.S.- Nawada, District- Nawada.

... .. Writ Petitioner- Respondent/s

Appearance :

For the Appellant/s : Mr. Prabhakar Jha, G.P.-27
Mr. Mukund Mohan Jha (A.C. To G.P.-27)

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-04-2022

Following issues arise for consideration in this appeal before this Court:-

- (i) Whether the writ petitioner/respondent-herein is entitled under law for the dues claimed?
- (iii) What are the responsibilities that accrue upon the State as an employer and whether in the present facts those responsibilities have been met?



2. The writ petitioner in CWJC No.864 of 2020 titled as Surendra Prasad Sinha versus The State of Bihar and Ors. approached the Court seeking the following reliefs:

“For issuance of appropriate writ(s)/direction(s) commanding the respondents for grant and pay post retirement benefits (Pension, Gratuity, Leave Enchashment, Provident Fund and Group Insurance) with all other consequential benefits along with dues of salary for the month of February 2018 till the date of retirement i.e. 31.01.2019 with statutory as well as penal interest.”

3. The learned Single Judge by an order dated 23rd June, 2020 disposed of the writ petition directing the respondent no.4 namely The District Education Officer, Nawada to take a final decision upon the writ petitioner’s (respondent herein) claim as per law and pay the amount due to him, with proper calculation within eight weeks from the date of the order.

4. Aggrieved by the impugned order, the State of Bihar and its authorities-appellants herein assails the order on the following grounds:-

- (i) That the writ petitioner suppressed the fact that his appointment was based on a degree provided by an unrecognized institution, namely, Sogra College of Education, Biharsharif, Nalanda.
- (ii) The departmental proceeding was initiated against the writ petitioner, which was converted into Rule 43(b) of



the Bihar Pension Rules, 1950 and the same is pending.

FACTS

5. Writ petitioner Surendra Prasad Sinha was appointed as an Assistant Teacher at Project Girls High School, Nawada on 06.01.1985.

6. Pursuant to an order dated 03.01.2006 passed in Civil Appeal No.6676-6681 of 2001 titled as State of Bihar & ors. vs. Project High School Teachers' Association and others, three member committee was constituted to examine the appointment of teachers by Managing Committee of Project Girls High School, who in turn filed an enquiry report. On the basis of the said report, the Director, Secondary Education, Bihar, Vide an office order dated 24.06.2008 (Annexure-2, Page-22), regularized the services of the petitioner and others, contingent upon them fulfilling certain conditions. The said office order is extracted hereinunder:-

“मानव संसाधन विकास विभाग बिहार
बिहार माध्यमिक शिक्षा कार्यालय, बुद्धमार्ग, पटना
कार्यालय आदेश

408 वीं , पटना दिनांक 24 जून 2008
संख्या - परि०/मा.शि.-०5/2006 -----माननीय उच्चतम न्यायालय द्वारा
सिविल अपील संख्या 6626-6675/2001 के साथ संलग्न सिविल अपील संख्या
6676-6681/2001 बिहार सरकार एवं अन्य बनाम परियोजना उच्च विधालय शिक्षक
संघ एवं अन्य में दिनांक 3.01.06 को पारित आदेश तदनुसार सिदस्थीय जांच समिति
से प्राप्त जांच प्रतिवेदन पर सरकार के आदेशानुसार प्रोजेक्ट कन्या उ०वि० नवादा मे
विधालय प्रबंध समिति द्वारा नियुक्त निम्नांकित शिक्षक/शिक्षिका एवं शिक्षकेतर
कर्मचारी की सेवा की मान्यता अंकित शर्तों के अधीन तत्काल आदेश निर्गत की तिथि
से प्रदान किया जाता है :-



| शिक्षक/शिक्षकेतर कर्मी के नाम | पदनाम | नियुक्ति तिथि | जन्म तिथि | योग्यता | विषय |
|-------------------------------|---------|---------------|-----------|-----------------------|--------------|
| श्री शिव कुमार प्रसाद | स.शि | 04/09/83 | 11/01/57 | वी.एस. सी. प्रशिक्षित | विज्ञान गणित |
| श्री महेश्वर प्रसाद | स.शि | 30/08/84 | 30/06/54 | बी.ए. प्रशिक्षित | अर्थशास्त्र |
| श्री बालमुकुन्द पाण्डेय | स.शि | 05/01/85 | 05/07/62 | आचार्य प्रशिक्षित | संस्कृत |
| श्री सुरेन्द्र प्रसाद सिन्हा | स.शि | 06/01/85 | 19/01/59 | बी.ए. प्रशिक्षित | अंग्रेजी |
| श्री देवेन्द्र पाण्डेय | लिपिक | 25/11/82 | 07/01/58 | मैट्रिक | |
| श्रीमती भुवनेश्वरी देवी | आदेशपाल | 04/09/83 | 06/02/56 | सक्षर | |
| श्री चन्द्रभान कुमार | आदेशपाल | 30/08/84 | 30/11/60 | मैट्रिक | |

2. दिनांक 1.01.1989 तथा 25.01.2000 अथवा प्रशिक्षण की योग्यता प्राप्ति तिथि से सेवा मान्यता एवं वेतन भुगतान की स्वीकृति के पूर्व इस अवधि में कार्यरत रहने के संबंध में निष्पक्ष जाँच के बाद लगातार कार्यरत रहने संबंधी दावा सही पाये जाने पर पूर्व की तिथि से सेवा मान्यता एवं बकाये राशि का भुगतान पाँच समान वार्षिक किस्तों में किये जाने के संबंध में निर्णय लिया जाएगा।

3. जिला शिक्षा पदाधिकारी शिक्षक/शिक्षिका एवं शिक्षकेतर कर्मियों के शैक्षणिक/प्रशैक्षणिक प्रमाण पत्रों की जाँच संबंधित बोर्ड/संस्थान/विश्वविद्यालय से दो माह के अंदर कराते हुए तदनुसार आवश्यक कार्रवाई करेंगे तथा की गयी कार्रवाई से विभाग को भी अवगत करायेगे। शिक्षकों एवं लिपिकों की सेवा मान्यता हेतु निर्धारित न्यूनतम योग्यता का ही अंकण उपर्युक्त योग्यता कॉलम में किया गया है।

4. शिक्षक/शिक्षिका एवं शिक्षकेतर कर्मियों से प्राप्त शैक्षणिक/प्रशैक्षणिक प्रमाणपत्र जन्मतिथि, विद्यालय में कार्यरत रहने संबंधी सूचना एवं अन्य सूचनार्यंग लत पाये जाने पर उनकी सेवा मान्यता को रद्द करते हुए नियमानुसार आवश्यक कार्रवाई भी की जायेगी।

5. शिक्षित स्नातक शिक्षक/शिक्षिका को स्नातक प्रशिक्षित का वेतनमान एवं अप्रशिक्षित स्नातक शिक्षक/शिक्षिका को स्नातक अप्रशिक्षित का वेतनमान देय होगा।

6. अप्रशिक्षित शिक्षक शिक्षिका को तीन वर्षों के अन्दर अपने खर्च पर प्रशिक्षण की योग्यता प्राप्त करना अनिवार्य होगा अन्यथा दी गयी सेवा मान्यता समाप्त कर दी जायेगी।

7. ऐसे शिक्षक, शिक्षिका एवं शिक्षकेतर कर्मचारी जो इस आदेश से विक्षुब्ध होंगे एवं स्वीकृत नीति के अन्तर्गत आने का दावा करेंगे अथवा स्वीकृत नीति के अन्तर्गत किसी शिक्षक/शिक्षिका एवं शिक्षकेतर कर्मी के सम्मिलित किये जाने के विरुद्ध शिकायत प्राप्त होती है तो प्राप्त अभ्यावेदन/शिकायत का निस्तार निदेशक माध्यमिक शिक्षा सरकार के आदेश से करेंगे।

8. संबंधित जिला शिक्षा पदाधिकारी का यह दायित्व होगा कि इस आदेश का सत्यापन स्वयं इस कार्यालय से कराने के बाद ही बेतनादि भुगतान की कार्रवाई करेंगे।

कमलेश्वर प्रसाद सिंह
(निदेशक माध्यमिक शिक्षा)

ज्ञापांक 408 वीं,

पटना दिनांक 24 /6/ 2008



प्रतिलिपि – महालेखाकार बिहार पटना , संबंधित क्षेत्रिय शिक्षा उप निदेशक/ संबंधित जिला शिक्षा पदाधिकारी/ संबंधित कोषागार पदाधिकारी/ संबंधित उप कोषागार पदाधिकारी/ संबंधित विधालय के प्रधानाध्यापक, शिक्षक एवं शिक्षकेतर कर्मचारी को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित।

कमलेश्वर प्रसाद सिंह
(निदेशक माध्यमिक शिक्षा)''

7. Condition no.3 specifically stipulates that the District Education Officer would, within two months of the date of the order, verify the educational certificates/degrees of the candidates from the Board/Institution/University and inform the Department about the same. Further, condition no.4 stipulates that in case any of the particulars of the candidates, if found incorrect, necessary action against them shall be taken along with removal from service.

8. The Director, Secondary Education, Government of Bihar vide an office order dated 25.07.2012 (Annexure-3, Page-26), upon receiving an enquiry report from the District Education Officer, Nawada, regularized the services of the writ petitioner on the post of Assistant Teacher with effect from 01.01.1989 and direction for payment of arrears in five equal installment was issued.

9. Prior to this order, in 2007, Md. Adil Rashid and others filed CWJC No.4560 of 2007, titled as Md. Adil Rashid & Ors. vs. The State of Bihar & Ors. seeking direction to include Sogara



College of Education, Biharsharif, Nalanda (the college of present writ petitioner) in the list of recognized Non-Government College(s) imparting B.Ed Education so that they would be eligible for position of Assistant Teacher. The learned Single Judge passed an order dated 24.10.2011, accepting the prayer of the petitioners therein, by directing the authorities to include the said college in the list for the session 1985-86 and other sessions for which its students were allowed to appear in the B.Ed examination conducted by the University.

10. The State of Bihar thereafter preferred Letters Patent Appeal bearing LPA No.1241 of 2014 titled as the State of Bihar and ors. Vs. Md. Adil Rashid and others. A co-ordinate Bench of this Court set aside the order passed by the learned Single Judge stating that the provisional permission granted to the institution can be held valid if only the institution was granted affiliation in the year 1990, but the same had not taken place. The judgment dated 19.05.2015 passed in the Letters Patent Appeal attained finality after the Special Leave to Appeal (c) no.23619 of 2015 titled as Md. Bashar Faruque & Ors. State of Bihar & Ors. was dismissed by Hon'ble the Apex Court vide order dated 15.09.2015.

11. However, the writ petitioner's services continued to be



utilized and he retired from service on 31.01.2019. Eight months post superannuation, vide memo no.2175 dated 09.10.2019, the Department initiated proceedings against him under rule 43(b) of the Bihar Pension Rules. Memo of charges has been issued to him on the same day vide memo no.2176.

12. The writ petition was filed on 14.01.2020. Vide order dated 20.01.2020, learned Single Judge directed the State to file a detailed affidavit showing the payment of admitted dues and according reasons for any claims denied. In spite of the aforesaid, the State did not file their counter affidavit and accordingly, writ petition was disposed of on 23.06.2020 with the directions mentioned supra.

13. Here, we note that in the grounds taken to file the writ petition, quashing of departmental proceedings initiated under rule 43(b) of the Bihar Pension Rules has not been prayed for.

14. Despite the appellants' claim that the writ petitioner's appointment was on the basis of unrecognized degree, certain facts are undeniable:-

- (i) The factum of employment of the writ petitioner in a school run by the State;
- (ii) Such employment being a continuous time of service;
- (iii) recognition of service was carried out after having certified that the writ petitioner met the conditions stipulated in the office order of 2008 (Annexure-2, Page-



22);

- (iv) An office order was issued in 2012 (Annexure-3, Page-26) which directed for payment of arrears from date of recognition of service, i.e. 01.01.1989;
- (v) despite granting of time in original writ petition proceedings, the State did not file the counter as directed by the learned Single Judge;
- (vi) no objection is on record on the part of the State on the date of final order.

15. The remuneration earned for services rendered is a right that cannot be denied. In the present case, the delay in disbursement of dues takes on the character of undisputed/admitted dues and, therefore, the employee is entitled to timely disbursement. A five-Judge Bench of the Hon'ble Supreme Court in State of **Madhya Pradesh v. Ranjojirao Shinde & another, AIR 1968 SC 1053** has observed that "It is obvious that a right to a sum of money is property."

16. The State's action of not paying the retiral dues of a teacher has deprived of a person of his hard earned money but also put into question the good service of imparting education to the next generation. After all, a man may use his income for purposes other than the three basic needs which have been mentioned in **Shantistar Builders v. Narayan Khimalal Totame & Others (1990) 1 SCC 520**, particularly in their retirement



when the pension and other associated benefits are the sole source of sustenance. Thereby the State prevented the welfare of its own citizens which goes against the core objectives of a welfare state like India.

17. In **D.S. Nakara v. Union of India, (1983) 1 SCC 305**, the Hon'ble Supreme Court held that-

“19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such



order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see Retirement Systems for Public Employees by Bleakney, p. 33).”

18. State’s role as a model employer is now fully established and well defined. The fundamental principles can be



culled out as under:

- (a) It is a promoter of economic justice. Model employer is the one having social conscience. [**Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449**]
- (b) It is expected to always exhibit fairness in action. [**Gurmail Singh and others v. State of Punjab and others, (1991) 1 SCC 189**]
- (c) It must conduct itself with high probity. [**Balram Gupta v. Union of India and Another, 1987 Supp (1) SCC 228**]
- (d) Its action must be fair; consistent; ensuring rule of law and more specifically meet the requirement of Articles 14 and 16 of the Constitution of India. [**State of Haryana v. Piara Singh, (1992) 4 SCC 118**]
- (e) It must not create a situation so as to put the hopes of the employee in despair. Its action must not be deceitful; treacherous; insensitive; betraying the trust created of its employees. [**Bhupendra Nath Hazarika and another v. State of Assam and others, (2013) 2 SCC 516**]
- (f) Trust, which an employee reposes upon the employer, is not to be betrayed, for not only it leads to an unsavoury feeling amongst employees not having been treated in a dignified and fair manner, but also it not being a concept of



good governance. [**State of Jharkhand and another v. Harihar Yadav and others, (2014) 2 SCC 114**]

19. Pension, as is well established, is the deferred portion of the compensation for rendering long years of service. It is a hard-earned benefit, accruing to an employee in the nature of property. [**State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; Veena Pandey versus Union of India & Others, 2021 SCC Online SC 1078**]

20. Emphasizingly, the Hon'ble Supreme has held that pensionary provisions must be given liberal construction more so as a social welfare measure. It is not a bounty to be dispersed contrary to the rules, but very basis for grant of such pension is to facilitate a retired government employee, live with dignity, in the winter of his life. This fundamental principle must be kept in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities. [**V. Sukumaran v. State of Kerala, (2020) 8 SCC 106; State of W.B. v. Haresh C. Banerjee and others, (2006) 7 SCC 651**]

21. It must also be noted that in the present case, the State does not have entirely clean hands for its action to be considered



to be in entirely in good faith. It is borne out from the record that the 2008 office order impose conditions which each person has to satisfy in order for recognition of service, i.e. all educational certificates/degrees be verified from the issuing institution by the concerned officer- which was purported to have been done and by the 2012 office order contingent upon the conditions being satisfied, arrears being paid. In approaching this Court, the writ petitioner has asked for salary and other dues starting from February, 2018 and from July, 2018 till his retirement in January, 2019. This implies that all other arrears and dues were paid to him on time. Well, it is now after twice being deemed eligible and duly recognized that the petitioner's employment is being claimed as having been done on unsound basis, and the only ground, i.e. his educational certification was from a un-recognized institution. Further, it is also noted that it was not post retirement when the factum of the petitioner's degree being from an un-recognized institution came to light. As noted in the facts above, one round of litigation has travelled all the way up to Hon'ble the Supreme Court for inclusion of that institution into the list of duly recognized one, which has been dismissed by the Court in 2015.

22. Therefore, from the date of the order dated 15.09.2015 passed by the Hon'ble Supreme Court in **Md. Bashar Faruque**



(supra) till that of superannuation on 31.01.2019, the appellant, i.e. State, was in the know of the status of the institution and even then, the writ petitioner's services were continually utilized and proceedings under Rule 43(b) of the Rules were initiated well after retirement- nine months, i.e. vide memo dated 09.10.2019.

23. Therefore, the State's grounds taken in this LPA cannot be sustained. Writ petitioner's service of more than three decade as a teacher cannot be disregarded, especially after the State itself must be held accountable for lax attitude in enforcing standards of employees in educational institutions.

24. It is surprising that a person with improper qualifications passed scrutiny initiated upon an order of Hon'ble the Apex Court and was duly recognized and paid arrears in accordance thereof. Such an action of a State cannot be construed lightly and steps must be taken to ensure that such glaring errors do not become repeated occurrences.

25. It is in the interest of justice that the writ petitioner's services be recognized and the money he has earned be paid to him. If at this point, the appellants' argument is acceded to, a life time dedication to a noble profession of teaching will be unfairly maligned.

26. In the light of the aforesaid discussion, we dispose of



the appeal in the following manner:-

- (a) The present Appeal against the impugned order dated 23.06.2020 passed in CWJC No.864 of 2020 titled as Surendra Prasad Sinha v. The State of Bihar & ors. by a learned Single Judge of this Court stands dismissed.
- (b) The pending salaries and the retiral dues along with statutory interest of the writ petitioner-respondent herein shall be calculated and paid within a period of four weeks from the date of this judgment, failing which interest upon the same at the rate of six percent per annum shall be payable.
- (c) Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

Harish Kumar, J. I agree.

(Harish Kumar, J)

P.K.P./Amrendra

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