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12/02/15

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. _____ of 2015

(Arising out of order dated 14/1/2015 passed in C.W.J.C.No.13198 of 2010)

Umashankar Prasad Yadav ----- Appellant/Petitioner

Versus

The State of Bihar & Other ----- Respondents/Respondents

Subject :- L.P.A.

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VAKALATNAMA

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Umashankar Prasad Yadav

Appellant/Petitioner

Versus

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Respondents/Respondents

SYNOPSIS

Memo of Appeal is directed against the judgement and order dated 14/1/2015 passed in C.W.J.C. No.13198 of 2010 by the Hon'ble Justice Mr. L. Narasimha Reddy.

HENCE THIS MEMO OF APPEAL

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.N o. _____ of 2015

(Arising out of order dated 14/1/2015 passed in C.W.J.C. No.13198 of 2010)

In the matter of an application Under Chapter-X,
Appendix-E of the Rules of High Court of
Judicature at Patna.

AND

In the matter of –

**Umashankar Prasad Yadav, S/o Late Bateshwar Prasad Yadav, Retired Assistant
Teacher of Sri Baldeo Bandelal High School, Godhta, P.S. Madhepura, District-
Madhepura. ----- Appellant/Petitioner**

Versus

1. The State of Bihar.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The Regional Deputy Director of Education, Koshi Division, Saharsa.
4. The District Education Officer, Madhepura.

----- Respondents-Respondents

To

The Hon'ble Mr. L. Narasimha Reddy, the Chief Justice of the High Court of Judicature at Patna and his other Companion Justices of the said Hon'ble High Court.

The humble Memo of Appeal on behalf of the appellants above named.

MOST RESPECTFULLY SHEWETH :-

Being aggrieved and dis-satisfied with the judgment and order dated 14/1/2015 passed in C.W.J.C. No.13198 of 2010 by the Hon'ble Justice Mr. L. Narasimha Reddy, the appellant above named begs to prefer this Memo of Appeal on amongst the following

GROUNDS :-

1. For that the judgement and order dated 14/1/2015 passed by Hon'ble Single Judge is bad both in the eyes of law as well as on facts.
2. For that the Hon'ble Judge has failed to appreciate the fact that the services of appellant was approved by Respondent No.4 vide order dated 31/7/1982 from the date of his joining in the school as 3rd July 1972.

3. For that the Hon'ble Single Judge has failed to appreciate the fact that when the services of the appellant has already been approved right from his initial date of appointment i.e. 3/7/1972 then the question of granting the pensionary benefits from the date of granting the recognition to the school does not at all arise.
4. For that the Hon'ble Single Judge has failed to appreciate the fact that the appellant is entitled for all pensionary benefits w.e.f. 3/7/1972.
5. For that the judgement and order dated 14/1/2015 passed by the Hon'ble Single Judge is otherwise bad in the eyes of law and as such the same deserves to be set aside.
6. For that the other grounds in the infirmity with the judgement and order dated 14/1/2015 passed by Hon'ble Single Judge will be raised at the time of argument.

It is therefore prayed that your Lordships may graciously be pleased to issue notice(s) to the Respondent Authorities and after hearing them may be pleased to set aside the judgement and order dated 14/1/2015 passed in C.W.J.C. No.13198 of 2010 by Hon'ble Mr. Justice L. Narasimha Reddy and

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further the prayer made in Paragraph-1 of
the writ application may be allowed.

AND/OR

May pass such other order(s) as your
Lordships may deem fit and proper.

And for this the appellant shall ever pray.

AFFIDAVIT

I, Umashankar Prasad Yadav, aged about 65 years, S/o Late Bateshwar Prasad Yadav, Retired Assistant Teacher of Sri Baldeo Bandelal High School, Godhta, P.S. Madhepura, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am Appellant in this case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this Memo of Appeal and Affidavit have been read over and explained to me in Hindi which I have fully understood.
3. That the statements made in Paragraph Nos. 1 to 6 are true to my knowledge and those statements made in Paragraph Nos. 112 to 113 are information derived from the records of the case and rests are by way of submissions before this Hon'ble Court, which I believe to be true.

Umashankar Prasad Yadav

CERTIFICATE

I certified that the ground set forth above are good grounds for Letters Patent Appeal and support the same at the time of hearing.

Certified further that my instructions are that the matter of which this Letters Patent Appeal arises have never come before this Hon'ble Court against the impugned order.

Certified further that no notice is necessary either to the Attorney General of India or to the Advocate General of Bihar under Order-27A, Rule-1 of the Code of Civil Procedure.

**ADVOCATE
For the Appellants.**

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13198 of 2010



Umashankar Prasad Yadav S/O Late Bateshwar Prasad Yadav Retired
Asstt. Teacher Of Sri Baldeo Bandelal, High School, Godhta, P.S.-
Madhepura, Distt.- Madhepura

.... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director, Secondary Education, Government of Bihar, Patna
3. The Regional Deputy Director of Education Koshi Division, Saharsa
4. The District Education Officer, Madhepura

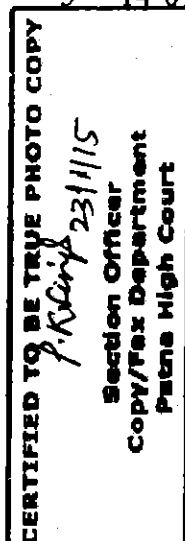
.... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
For the Respondent/s : Mr. Ashok Priyadarshi

**CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER**

5 14-01-2015



The petitioner was employed as a Teacher in a Private educational institution on 3rd July, 1972. The Institution was under financial aid from the Government. He retired from the service. However, he was extended retirement benefits treating the date of appointment as 6th January, 1976. Therefore, this petition has been filed to direct the respondents to extend the benefit by treating the date of appointment as 3rd July, 1972.

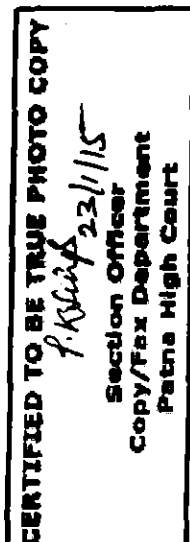
The petitioner contends that once he has been appointed on 3rd July, 1972, there is no basis for the respondents in extending the benefit only from 6th January, 1976.



On behalf of the respondents, a detailed counter affidavit is filed. It is stated that though the petitioner was appointed in the year 1972, it was not against approved vacancies and the petitioner was treated as a candidate against the clear vacancy only w.e.f. 6th January, 1976.

Heard Mr. Rajendra Prasad Singh, learned senior counsel for the petitioner and Mr. Ashok Priyadarshi, learned counsel for the respondents.

The petitioner, no doubt, was appointed initially on 3rd July, 1972. That could have been treated as basis for working out the retirement benefits, if only the appointment was against a clear vacancy, recognized for the institution. In the counter affidavit, it is clearly mentioned that the petitioner was appointed by the Managing Committee at a time when the institution was under partial recognition for Class VIII & IX, and the recognition was only for five posts. The appointment of the petitioner is said to be not against the five posts, and that he could be treated as regular, only from 6th January, 1976 from which date the vacancy was available. The petitioner did not dispute the facts, stated by the respondents in the counter





affidavit. Thus, it is clear that the appointment of the petitioner against a clear and recognized vacancy has taken place only in the year 1976. He cannot claim the retirement benefits from a date anterior to 6th January, 1976.

This Court does not find any basis to grant benefit to the petitioner. The writ petition is dismissed.

Interlocutory application, if any, shall also stand disposed of.

sd/-

(L. Narasimha Reddy, CJ)

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Section Officer
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