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IN THE HIGH COURT OF JUDICATURE AT PATNA.

( Letters Patent Appellate Jurisdiction )

L.P.A. No. 978 of 2012

(Arising out of order dated 14/3/12 passed in C.W.J.C. No.4161 of 2012)

Sone Lal Yadav

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Petitioner-Appellant.

Versus

The State of Bihar & Others

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Respondents-Respondents.

Subject :- L.P.A.

Sl.Nos.

Particulars

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VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(Letters Patent Jurisdiction)

L.P.A. No. 978 of 2012

Sone Lal Yadav. Vrs. The State of Bihar and Others.

**SYNOPSIS**

**Relief(s):-**

- Para-1 : Appeal against the judgment and order passed in C.W.J.C. No. 4161 of 2012 dated 14.3.2012 passed by Hon'ble Mr. Justice Kishore Kumar Mandal. **Para-1** .
- 1964 : Appellant was appointed as Assistant Teacher in S.M.High School. He was Transferred in Kalawati H.S. Bangaon Saharsa in Year 1996. **Para-2** .
- 1.8.1972 : Appellant become I.Sc. Trained Teacher after raising his qualification. **Para-7** .
- 14.7.1977 : Again appellant raised his qualification graduation. **Para-3** .
- 5.8.1989 : Appellant was granted 1st time bound promotion. **Para-4** .
- 31.10.99 : Appellant superannuated as Assistant Teacher on 31.10.1999 from Kalawati H.S. **Para-5** .
- 02.11.2001 : Pension of appellant was fixed through P.P.O. No. 355070 contained in PAN No. 511/16270. **Para-9** .
- 28.2.2002 : Appellant firstly filed rpresentation on 28.2.02 before A.G. but when it went unheard therefore appellant filed C.W.J.C. No. 8011 of 2002 which was allowed on 10.2.05. **Para-10** .
- 15.7.2005 : Appellant filed representation before all concerned authority without giving proper opportunity of hearing to appellant has representation has been rejected by A.G. on 15.7.05. **Para-10** .
- 30.4.11 : Appellant submitted detail application an representation on 30.4.2011.
- 14.3.12 : Appellant filed C.W.J.C. No. 4161 of 2012 the said writ application was heard and disposed of on 14.3.2012.

**Hence this Memo of Appeal.**

Through:- Mukesh Kumar Srng  
Advocate  
A.O.R No - 03172  
3/5/2012

IN THE HIGH COURT OF JUDICATURE AT PATNA.

( Letters Patent Appellate Jurisdiction )

L.P.A. No. 978 of 2012

(Arising out of order dated 14/3/12 passed in C.W.J.C. No.4161 of 2012)

In the matter of an Memo of Appeal  
Under Clause-X, Appendix-'E' of the  
Patna High Court Rules.

And

In the matter of -

Sone Lal Yadav, Son of Late Shital Yadav, Resident of Laualagam, P.S.  
Chausa, District - Madhepura. ---- Petitioner-Appellant.

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Secondary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Madhubani.
5. The Regional Deputy Director of Education, Darbhanga Division,  
Darbhanga.

6. The District Education Officer, Saharsa.
7. The District Programme Officer, Saharsa.
8. The District Accounts Officer, Saharsa.
9. The District Finance Officer, Saharsa.
10. The Treasury Officer, Madhepura.
11. The Principal, Kalawati High School, Bangaon, Saharsa.
12. The Accountant General, Bihar, Patna.

----- Respondents-Respondents.

To

The Hon'ble Ms. Rekha M. Doshit, the Chief Justice of the High Court of Judicature at Patna and her other Companion Justices of the said Hon'ble Court.

The humble Memo of Appeal on behalf of above named appellant.

**MOST RESPECTFULLY SHEWETH :-**

1. That this is an Appeal against the judgement and order passed in C.W.J.C. No.4161 of 2012, dated 14/3/2012 passed by Hon'ble Mr. Justice Kishore Kumar Mandal and further for allowing the prayer made in the writ application.
2. That appellant was appointed as Assistant Teacher in the year 1964 in S.M.High School, Chautham and was transferred to High School Shore Bazar, Saharsa. Thereafter he was transferred from High

School, Shore Bazar, Saharsa to Kalawati High School, Bangaon, Saharsa in year 1996,

3. That during service period appellant was granted 1<sup>st</sup> time bound promotion vide Memo No.309, dated 5.8.1989 by RDDE, Bhagalpur and as per Government Circular pay scale was fixed.
4. That it is stated that appellant after completing satisfactory service superannuated as Assistant teacher on 31.10.1999 from Kalawati High School, Bangaon, Saharsa.
5. That after retirement through PPO No.355070 contained in PAN No.511/16270, dated 02.11.2001 pension of appellant was fixed at Rs.4586/- per month without appreciating the fact that he was being granted provisional pension of Rs.5086/- per month vide letter No.504-5, dated 14.1.2000 issued under the signature of DEO, Saharsa.
6. That it is relevant to mention here that reduction of pay scale and re-fixation of pension of appellant has been made by the Accountant General, Bihar without affording him opportunity of hearing ignoring the fact that pay scale of appellant was fixed and granted to him by the then DSE after obtaining sanction from Disgtict Accounts Office and any allegation of fraud or misrepresentation on the part of this appellant was never alleged against him.

7. That it is pertinent to state here that appellant was appointed and joined as untrained teacher but subsequently on 1.8.1972 he became I.Sc. trained teacher after raising his qualification. Again appellant raised his qualification to graduation and he became eligible for grant of graduate trained scale on 14.7.1977 which was revised with effect from 1.4.1981 and was granted pay scale of Rs.850-1360.
8. That it is also relevant to state here that immediately after grant of I.Sc. trained scale appellant was placed under basic grade scale and therefore he was entitled for grant of promoted pay scale of Graduate trained w.e.f. 14.7.1977 and therefore DEO, Saharsa had rightly granted him time bound promotion on 14.7.1987 on completion of 10 years and his pay scale was rightly fixed at Rs.2420/- in view of Para 13(III) of departmental resolution no.6022, dated 18.12.1989 and similarly on completion of 12 years service pay of appellant was rightly fixed on 14.7.1989 at Rs.2600/- per month (in the pay scale of Rs.2000-3500/-).
9. That since re-fixation of pay scale after reducing pension by Rs.500/- by the office of Accountant General was done in most arbitrary manner and was without jurisdiction and therefore appellant firstly filed representation on 28.2.2002 before the Accountant General, Bihar but when it went unheard therefore appellant filed C.W.J.C. No.8011 of 2002 which was ultimately heard and allowed vide order

dated 10.2.2005 by Hon'ble Mr. Justice R.S.Garg with direction to the competent authority to decide the matter afresh.

10. That accordingly this appellant filed representation before all concerned authorities and this again without giving proper opportunity of hearing to appellant and without hearing him in person, his representation filed in the light of direction of this Hon'ble Court rejected by the Accountant General, Bihar through a speaking order dated 15.7.2005 which has neer been communicated to this applicant.
11. That it is stated that recently in month of April 2011 appellant came to know about order dated 15.7.2005 passed by Accountant General, Bihar then any how he procured the aforesaid order dated 15.7.2005 and he came to know that his representation has been rejected on extraneous consideration.
12. That immediately after coming to know about the order of the Accountant General contained in Annexure-3 of the writ application this appellant submitted a detailed application cum representation on 30.4.2011 stating the detailed facts and requested the Accountant General to provide him due opportunity of hearing on the issue and requested to review and modify the order dated 15.7.2005 which is apparently based on erroneous consideration of fact and was passed in error of record but same went unheard.

13. That against the order contained in Annexure-4 of the writ application, appellant filed C.W.J.C. No.4161 of 2012. The said writ application was heard and disposed of on 14/3/2012.

Being aggrieved and dis-satisfied with the order of this Hon'ble Court dated 14/3/2012 passed by Hon'ble Mr. Justice Kishore Kumar Mandal in C.W.J.C. No.3622/2011, the appellant above named prefers this Memo of Appeal on amongst others the following

**GROUND S :-**

- i) For that the order of the Accountant General contained in Annexure-4 of the writ application is totally illegal and in violation of principles of Natural Justice.
- ii) For that the order contained in Annexure-4 of the writ application has failed to appreciate that the appellant was in basic scale of pay w.e.f. 1/8/1972 in I.Sc. trained pay scale and he was granted Graduate Trained Scale legally on 14/7/1977 and time bound scale on 14/7/1989.
- iii) For that the Accountant General has failed to appreciate that as per Government Circular and scale of pay, appellant was rightly granted the pay scale of I.Sc. trained, Graduate Trained and Time Bound Scale.



- iv) For that the Accountant General have no jurisdiction to revise or reduce the pay scale of appellant and that also without hearing him and without calling upon appellant to answer the charge, if any.
- v) For that the learned judge has failed to consider any of the issues/points raised in the writ application.
- vi) For that the learned Judge has failed to appreciate that the impugned order of the writ application is without any substance and against the law.
- vii) For that the learned judge has merely quoted from answer of the writ application and on that basis the Hon'ble Judge has legally came to the conclusion that adequate reasons have been assigned and as such there is no arbitrariness or legality in the impugned order.
- viii) For that the learned Judge has failed to notice various Government decisions.
- ix) For that the learned Judge has failed to appreciate that the pay scale granted to an employee can not be reduced/revised after his retirement.

- 8 -

It is therefore prayed that this Hon'ble Court may be pleased to issue notice and after hearing the parties set aside the judgement and order passed in C.W.J.C. No.4161 of 2012, dated 14/3/2012 and allow the prayer made in the writ application.

And/Or

Pass such other order/orders which may appear fit and proper.

And for this the appellant shall ever pray.

AFFIDAVIT

I, Sone Lal Yadav, aged about 72 years, Son of Late Shital Yadav, Resident of Laualagam, P.S. Chausa, District - Madhepura, do hereby solemnly affirm and state as follows :-

1. That I am Appellant in this case and as such I am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this Appeal and I have understood the same.
3. That the statements made in Paragraph Nos. 3 to 13 are true to my knowledge and those made in Paragraph Nos. 14 are based on information derived from the records and rests are by way of submission before this Hon'ble Court.

सने लाल यादव

CERTIFICATE

Certified that the grounds set forth above are good grounds for the present Letters Patent Appellate Jurisdiction.

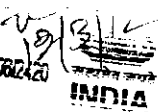
It is further certified that matter arising out of present case has never come up before this Hon'ble Court earlier.

My instructions are that no notice of the present case need be issued, either to the Attorney General of India or to the Advocate General of Bihar under XXVII A Rule-1A of the Code of Civil Procedure.

Advocate for the Appellant/Petitioner  
Mukesh Kumar Srivastava  
A.O.R NO - 03172

31/5/2012

AUTH NO. 3MUDAK-PATNA-2320002420



718466 BIHAR

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IN THE HIGH COURT OF JUDICATURE AT PATNA  
Civil Writ Jurisdiction Case No.4161 of 2012

1. Sone Lal Yadav Son Of Late Shital Yadav Resident Of Laualagam, P.S.-  
Chausa, District- Mahepura.

Versus

Petitioner/s

1. The State Of Bihar
2. The Principle Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Secondary Education, Govt. Of Bihar, Patna
4. The District Magistrate, Madhepura.
5. The Regional Deputy Director of Education, Saharsa Division, Saharsa.
6. The District Education Officer, Saharsa
7. The District Programme Officer, Saharsa
8. The District Accounts Officer, Saharsa
9. The District Finance Officer, Saharsa
10. The Treasury Officer, Madhepura
11. The Principal, Kalawati High School, Bangaon, Saharsa
12. The Accountant General, Bihar, Patna

Respondent/s

Appearance :

For the Petitioner/s : Mr. Ambika Bhagat, Advocate  
 For the State : Mr. L. P.K. Rajgrihar, Advocate  
 For the Accountant General: Mr. Binod Kumar Labh, Standing Counsel

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR  
MANDAL  
ORAL ORDER

3 14-03-2012

Heard learned counsel for the petitioner, State and Accountant General.

Petitioner retired as Assistant Teacher of a High School on 31.10.99. He was granted provisional pension in the sum of Rs. 5086/-. While fixing the final pension the authorities reduced the amount of pension to Rs. 4586/-. Feeling aggrieved by such reduction petitioner preferred a writ petition being CWJC No. 8011 of 2002. This Court, by an order dated 10.02.2005

BIHAR CIRCLE  
SAHARSA



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JUDICIAL

AUTH NO. 3MUDAK-PATNA-2320002420  
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BIHAR

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(Annexure-3) interfered with the order reducing the pension on the ground that the same was done without affording an opportunity to the petitioner. The relevant part of the said order (Annexure-3) is extracted hereinbelow:-

“ In the opinion of this Court, the question is not that whether the Rules have been observed or not, the question is that why an opportunity of hearing was not afforded to the petitioner. The order contained in Annexure-1 is quashed. The respondents would be free to afford an opportunity of hearing to the petitioner, ask his show cause and then pass a final order in the matter. It is expected of the respondents that a final order would be passed by them within four months from today.”

In the light of the said order a representation was filed whereafter the Accountant General provided an opportunity to the petitioner to appear in person or file further documents, if any. Considering the documents placed by the petitioner and the facts appearing from the record the Accountant General passed a reasoned order on 15.7.05 noticing all relevant facts. The said respondent in paragraph nos. 10 and 11 found as under:-

“10. The correct method of fixation of pay in the instant case is that the pay of the petitioner should be fixed at Rs. 1940 as on 1.1.86 in the revised basic grade scale Rs. 1640-2900 vide clause 13(i) of FD resolution dt. 18.12.89 read with schedule II mentioned above. Thereafter on completion of 12 years service in basic grade on 14.7.89 his pay was required to be refixed in the Sr. scale of Rs. 2000-3500 under FR 22(1) (a)(ii) read with sub paragraph (iii) and (vii) of

clause 13 of FD resolution dt. 18.12.89 at Rs. 2180 and in revised scale of Rs. 6500-10500 at Rs. 8300 as on 1.4.96 with annual increment as on 1/4 each year. In this manner his last pay prior to retirement would be 8900/- and pension Rs. 4420/- P.M.

11. The claim of petitioner of fixation of pay under FR 22 (c) is therefore not tenable. His pension may be revised with immediate effect and no recovery of the pay and allowances and provisional/pension already paid should be effected."

Learned counsel for the petitioner submits that since no opportunity of personal hearing was granted the petitioner filed a review application (Annexure-5) which is pending consideration before the said respondent.

Learned counsel for the Accountant General, on the other hand, submits that from bare perusal of para 2 of the order (Annexure-4) it would appear that more than adequate opportunity was granted to the petitioner to file his show cause and to appear in support thereof. After having afforded those opportunities the impugned order has been passed setting out adequate reasons therefor which have not shown to be arbitrary or illegal.

According to the petitioner, he filed a review application after about 06 years of the passing of the said order. It is the contention of the petitioner that the same is pending consideration.

From perusal of the materials on record and after hearing the parties, this Court does not find any illegality in the order passed by the respondent -Accountant General meriting any interference. If the petitioner has filed any review application, he is granted liberty to pursue the same in accordance with law.

The application stands disposed of.

*sd/-*  
(Kishore Kumar Mandal, J)

Shyam/-

CERTIFIED TO BE TRUE PHOTO COPY

*[Signature]*  
For Joint Registrar (J) 26-27  
Patna High Court

Notarized U/S 74 Act I of 1871

Rakesh Kumar  
TJ

26/3/2012

E/9/9V38

COPY



IN THE HIGH COURT OF JUDICATURE AT PATNA.

( Letters Patent Appellate Jurisdiction )

I.A.No. 4407 of 2012

IN

L.P.A. No. 978 of 2012

(Arising out of order dated 14/3/12 passed in C.W.J.C. No.4161 of 2012)

Sone Lal Yadav

----

Petitioner-Appellant.

Versus

The State of Bihar & Others

----

Respondents-Respondents.

Subject :- Interlocutory Application.

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Interlocutory Application.

IN THE HIGH COURT OF JUDICATURE AT PATNA.

( Letters Patent Appellate Jurisdiction )

I.A.No. \_\_\_\_\_ of 2012

IN

L.P.A. No. \_\_\_\_\_ of 2012

(Arising out of order dated 14/3/12 passed in C.W.J.C. No.4161 of 2012)

In the matter of an Interlocutory

Application U/s 5 of the Limitation

Act.

And

In the matter of -

Sone Lal Yadav

----

Petitioner-Appellant.

Versus

The State of Bihar & Others

----

Respondents-Respondents.

To

The Hon'ble Ms. Rekha M. Doshit, the Chief Justice of the High Court of  
Judicature at Patna and her other Companion Justices of the said Hon'ble  
Court.

The humble Interlocutory Application  
on behalf of above named appellant.

**MOST RESPECTFULLY SHEWETH :-**

1. That this is an application for condonation of delay of 13 in filing the present L.P.A.
2. That the writ application was disposed of on 14/3/2012.
3. That the appellant was informed by his learned Lawyer and came to Patna and obtain certified copy of judgement under appeal.
4. That the appellant, thereafter, returned to his village and arrange expenses for filing the appeal and came to Patna on 29/4/2012 and handed over file for filing the present L.P.A. in this Hon'ble Court.
5. That the delay in filing the appeal is only because appellant could not arrange expenditure in filing appeal, in time there is no latches on the part of the appellant.
6. That the appellant has good prima-facie case and as such he is filing the present L.P.A. for adjudication.

It is therefore prayed that this Hon'ble Court  
may be pleased to condone the delay in  
filing the present L.P.A.

And for this the appellant shall ever pray.

**AFFIDAVIT**

I, Sone Lal Yadav, aged about 72 years, Son of Late Shital Yadav, Resident of Laualagam, P.S. Chausa, District – Madhepura, do hereby solemnly affirm and state as follows :-

1. That I am Appellant in this case and as such I am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this Appeal and I have understood the same.
3. That the statements made in Paragraph Nos. \_\_\_\_ to \_\_\_\_ are true to my knowledge and those made in Paragraph Nos. \_\_\_\_\_ are based on information derived from the records and rests are by way of submission before this Hon'ble Court.

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