

Letters Patent Appeal No.1415 OF 1999

**Appeal against the Judgment and Order dated
 28-10-1999 passed in C.W.J.C.No.4583 of 1987
 by a Bench of this Court**

 Khirod Mahto Appellant
 Versus

The State of Bihar & others Respondents

Advocate for the Appellant :- Mr. R.K.Ranjan

Advocate for the State:- Mr.Satyendra Kumar Jha,J.C.to
 Addl.Advocate General

P R E S E N T

THE HON'BLE MR. JUSTICE SHIVA KIRTI SINGH
 THE HON'BLE MR. JUSTICE J.N.SINGH

Shiva Kirti Singh,
 J.N.Singh, JJ

Heard learned counsel for the appellant,

learned counsel for the State of Bihar and learned
 counsel appearing for the State of Jharkhand.

2. The case of the appellant/writ petitioner is
 that he was appointed on the post of Headmaster in a
 privately managed High School on 1-1-1973. His further
 case is that the school in question which is now
 situated in the jurisdiction of Jharkhand State was
 taken over with effect from 2-10-1980 under an Ordinance
 issued by the State of Bihar and that Ordinance was
 replaced by Bihar Act No.33 of 1981 .

3. The writ petitioner filed C.W.J.C.No.4583 of
 1987 with a prayer for a direction upon the authorities
 to recognize the service of the petitioner as Headmaster
 of the High School, Roladih in the district of West
 Singhbhum with effect from 2-10-1980. The prayer of the

writ petitioner was not accepted by the writ court on the ground that he had not acquired the minimum experience as a Headmaster on the date of take over of the school in question. On facts learned counsel for the appellant has not disputed the reason given by the writ court for not accepting appellant's prayer.

However, an argument has been advanced on the basis of an order dated 4-7-2001 passed by a Division Bench of this court in L.P.A.No. 929 of 2000 (State of Bihar and others Vrs.Smt.Sushila Devi)that if the incumbent on the post of Headmaster has not been regularized then his claim for regularization may be considered with effect from the date on which he completed 7 years of service reckoned from the date on which the institution was taken over by the Government. On this principle,

learned counsel for the appellant has submitted that the writ petitioner/appellant wants to modify his prayer made in the writ petition and wants a relief that his case may be considered for regularization on the post of Headmaster in accordance with law with effect from 2-10-1987 when he completed 7 years of service in the school in question after it was taken over by the Government.

4. Learned counsel for the State of Bihar has submitted that since the school is now within the jurisdiction of State of Jharkhand the relevant facts and the claim of other eligible persons for the post of Headmaster may have to be considered in accordance with law by the State of Jharkhand and he has no objection if such a direction is issued against the concerned authorities of Jharkhand.

5. Learned counsel for the State of Jharkhand has not been given any instruction although State of

Jharkhand has been impleaded as a party and notice was given to its counsel about a month earlier. He has submitted that in law the claim of the writ petitioner has to be allowed against the then employer the State of Bihar and only its implementation has to be done by the State of Jharkhand.

6. On going through the judgment of the writ court we find that the writ court has relied upon two judgments of this court including a judgment by Division Bench in the case of Fulena Prasad Yadav Vrs. State of Bihar reported in 1991 (2) PLJR 449 which was followed in the case of Ram Balak Prasad Singh Vrs. State of Bihar reported in 1998 PLJR (3) 255. The writ court also noticed that in the case of Ram Balak Prasad Singh (supra) the judgment of the Supreme Court in the case of A.K.Pradhan was considered in detail and thereafter a finding was recorded that the said judgment was in the nature of an order under Article 142 of the Constitution of India and by that judgment the Supreme Court has not decided the issue as to what would be the cut off date for considering the qualification of a person claiming the post of Headmaster in a school taken over by the State under Act No. 33 of 1981. A perusal of the Division Bench Judgment in the case of Fulena Yadav (supra) shows that there was a claim of promotion to the post of Headmaster in a taken over school where such posts were vacant from before the date of take over and the claim of a person even as founder Headmaster of such school was required to be decided in accordance with the policy decision of the State Government contained in Circular Nos. 510 and 511 both dated 20-11-91. In the former situation the qualification for the

post of Headmaster requires 10 years of experience as a teacher in a recognized school and for the latter minimum experience of 7 years was required for founder Headmaster. The cut-off date for considering the eligibility requirement of experience has to be the date of take over of the school.

7. Learned counsel for the appellant has submitted that after the judgment of the writ court in L.P.A.No. 929 of 2000 (The State of Bihar & ors Vrs.Smt. Susheela Devi) decided on 4-7-2001, a Division Bench by referring to the judgment of the Supreme Court in the case of A.K.Pradhan case reported in 1998(2) 211 has observed that where the incumbent Headmaster has completed 7 years of experience and has not been regularized as yet then his case may also be considered for regularization with effect from the date of completing 7 years of service.

8. The judgment of L.P.A.No.929 of 2000 has been annexed as Annexure-2 to I.A.No.4120 of 2001. A bare perusal of the judgment shows that the Division Bench did not consider earlier Division Bench judgment of this court nor considered any circular or provisions under the Act and merely refused to interfere with the order of a single Bench. We are of the view that the order of the Division Bench contained in annexure-2 to the aforesaid I.A. is per incuriam of the judgments of this court deciding the cut off date for considering the eligibility criteria in respect of experience for the post of Headmaster. However, in view of revised prayer made by the appellant/ writ petitioner that the authorities be directed only to consider his claim for regularization/promotion/ appointment to the post of

Headmaster with effect from the date on which he has completed 7 years of service on the date the institution was taken over i.e. from 2-10-1987, we are of the view that such prayer which was not earlier considered by the authorities may be taken up and the authorities concerned shall consider such a prayer of the appellant/writ petitioner in accordance with law keeping in mind any other such interest of similarly situated employees.

9. With the aforesaid observation this letters patent appeal is disposed of. It is expected that the concerned authorities of the successor State ie, the State of Jharkhand will consider the aforesaid prayer of the appellant/writ petitioner at an early date, preferably within three months from the date of filing of a representation along with a copy of this order.

(Shiva Kirti Singh, J)

(J.N. Singh, J)

Patna High Court, Patna
Dated the 28th April, 2008
NAFR Naresh