

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2168 of 2016

In
Civil Writ Jurisdiction Case No.17414 of 2013

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1. Bihar Intermediate Education Council Employees Association, Patna through its General Secretary, Anil Kumar Singh, son of Ugreshar Prasad Singh, Resident of 7/B, House No.2, Near Shiv Mandir, Indrapuri, Post - Keshari Nagar, Police Station - Patliputra, District - Patna.
 2. Sharfuddin Ali, son of late Fakir Ali, Resident of Nausa Mor, Nausa Bagicha, Police Station - Phulwarisharif, District - Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. Bihar School Examination Board, Patna through its Secretary.
5. The Chairman, Bihar School Examination Board, Patna.
6. The Secretary, Bihar School Examination Board, Patna.
7. Sheo Pujan Kumar Singh Son of not Known, Assistant, Bihar School Examination Board, Sinha Library Road, Patna.
8. Rajesh Ranjan Son of not Known, Upper Division Clerk, Bihar School Examination Board, Sinha Library Road, Patna. Respondent nos. 7 and 8 are respondents in representative capacity for all those employees of Employees of Bihar School Examination Board, who have become senior to the petitioners.
9. Bihar Vidyalaya Pariksha Samiti Kramchari Sangh, Patna, through its Secretary, situated at Bihar School Examination Board, Sinha Library Road, Patna – 800001 (Added as party in CWJC No. 17414 of 2013 by order dated 28.06.2016)

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Arun Kumar Sinha, Advocate. Mr. Ajit Narayan Lall, Advocate.
For the Respondents-State:	:	Mr. Shashi Shekhar Tiwari, AC to AAG-13.
For the B.S.E.B.	:	Mr. Satyabir Bharti, Advocate.
For Respondent Nos. 7 to 9	:	Mr. Harsh Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 07-11-2022

In the instant Letters Patent Appeal, appellant has



assailed the order of learned Single Judge dated 24.10.2016 passed in C.W.J.C. No. 17414 of 2013. The Appellant Association is consisting of various cadre posts in the then Bihar Intermediate Education Council. The aforesaid Council was dissolved. In the result, assets and liabilities was taken over by State Government adjusting employees of the then Bihar Intermediate Education Council in the Bihar School Examination Board. Their grievance is to count the service rendered in the Bihar Intermediate Education Council in the Bihar School Examination Board while granting seniority. In denial of seniority, the Appellant Association filed CWJC No. 17414 of 2013 which was rejected, hence the present Letters Patent Appeal.

2. Learned counsel for the appellants vehemently contented that employees of the then Council are entitled to count their past service in the Council in the Bihar School Examination Board towards grant of seniority which has been denied. Such a denial is in violation of Articles 14 and 16 of the Constitution. In this regard, he has pointed out Clauses of Bihar Intermediate Education Council Act, 1992 which was repealed in the year 2007 to contend that service benefits in the then Council is required to be counted for the purpose of extending seniority in the Bihar School Examination Board. Therefore, denial of seniority and extending only benefit of pension and



A.C.P. is arbitrary. Such grant of pension and A.C.P. is in terms of adjustment of service of employees of the abolished Bihar Intermediate Education Council in light of sub Section 2 of Section 3 of Bihar Intermediate Education Council (Repeal Act), 2007, Resolution dated 12.07.2012.

3. Per contra, learned counsel for the State-respondents resisted the aforesaid contentions and supported the order of the learned Single Judge. It is also submitted that Appellant Association have not questioned the validity of Clause 13 of the Resolution dated 12.07.2012 in respect of extending past service of the adjusted employees would be counted for the purpose of pension and A.C.P. only. In other words, they are not entitled to count their past service in the Council except towards pension and A.C.P. It is submitted that by virtue of Resolution dated 12.07.2012, Appellant Association - employees have been made clear that they are entitled to count their past service for the purpose of pension and A.C.P. In the absence of challenge to the aforesaid Clause, the Appellant Association are not entitled. It is also submitted that Appellant Association petition is not maintainable. The Association have not produced registration certificate. On the other hand, they have produced certain certificate which is not relating to the Appellant Association.

4. Learned counsel for the appellant submitted that



Appellant Association is affiliated to registered association which has been placed on record. Perusal of the title of the Appellant Association, it is crystal clear that it is an independent Association. If there is any statement in the bye law that does not enure to the benefit of unregistered Association. Learned counsel for the appellant submitted that the learned Single Judge has committed error in not appreciating the service rendered by the employees of the Appellant Association in the then Council. The Council was dissolved in the public interest, therefore, they are entitled to count past service rendered in the Council including seniority in the Bihar School Examination Board. It is also submitted that in all fairness the past service was required to be counted for the purpose of seniority and it is not a case of transfer/absorption of an employee at his or her request. On the other hand, it is a dissolution of the Council at the behest of the State.

5. Heard the learned counsel for the respective parties.

6. Question for consideration is whether Employees Association writ petition is maintainable or not? Further seniority is an individual grievance and not grievance of an association or not? Further, if grievance of the appellant association is extended, the third party right would be affected for the reasons that such a those persons who have been



appointed during the intervening period they have entered into a particular cadre, in the event of extending seniority to the employees of the Appellant Association, they march over such a those persons whose right has already created. In other words, Appellant Association have not impleaded such a those persons whose rights are likely to be affected. Moreover, seniority is not a fundamental right and it is only depending upon facts and circumstances. The Appellant Association have not questioned the Clause 13 of the Resolution dated 12.07.2012. Clause 13 restricted in counting past service of the adjusted employees only towards pension and A.C.P. while declining other service benefits including seniority.

7. The Appellant Association petition is not maintainable for the reasons that it is not a registered Association. It may be affiliated to some other Association that too by means of Clause stated in bye law of a different Association that does not give the status of the Association as a registered Association.

8. Learned counsel for the appellant cited the decision of the Apex Court in the case of **Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association v. Union of India and Ors.**, reported in **1981 (1) SCC 246**, Para-62, the aforesaid decision is not assisting the appellants



grievance in maintaining Association petition for the reasons that the aforesaid decision is under Article 32 of the Constitution. The aforementioned decision of the appellant is distinguishable on facts that the Appellant Association is not in respect of a particular cadre, on the other hand, it releases to more than two cadres, therefore, Association petition filed by the appellant is not maintainable. Further, it is to be noted that seniority matter is an individual grievance. For example, the present association is consisting of clerks, under Secretary and different cadres. If 'x' person is in the under Secretary cadre, he can claim seniority depending upon entry into service. The 'x' – Under Secretary who is a part of the association, if he is extended seniority from the inception i.e., service rendered in the Council, in that event, such a those under Secretaries who are regularly appointed in the Bihar School Examination Board, their right would be affected. Therefore, seniority is an individual grievance. The same cannot be agitated by Association. Moreover, it is to be noted that in the present case appellant Association is consisting of different cadres of employees. Even assuming that such Association is of a particular cadre, one can understand because for the reasons that it is a common cause of a class of persons. Class of persons association could be entertained whereas in the present, Appellant Association is consisting of different cadres. They do



not fall under particular class of employees of a particular cadre.

In the light of these facts and circumstances, writ petition itself is not maintainable by an Association.

9. The appellants have not questioned the Clause 13 of the Resolution dated 12.07.2012. The Resolution Item No. XIII reads as under:

“XIII. Past service of the adjusted employees will be counted for the purpose of pension and A.C.P.”

10. The aforesaid clause is restricted in counting past service towards pension and A.C.P. and not seniority. Therefore, there is no challenge to the aforesaid Clause in restricting past service towards pension and A.C.P. and not extending for seniority benefit. Further, it is to be noted that during the intervening period from 12.07.2012 the date on which Resolution was passed and presentation of writ petition whether seniority list has been prepared in a different cadre has been apprised so as to contend that the employees of the Appellant Association have been placed with reference to date of entry in the Bihar School Examination Board in the year 2007 by virtue of Repealing Act or from the date of passing Resolution in the year 2012. The Bihar School Examination Board must have prepared and notified seniority list of various cadres. The same has been placed on record as Annexures 2 and 14 to the writ petition and the same has been questioned. Even questioning the aforesaid seniority list cannot be entertained for



the simple reason that such a those persons whose rights are likely to be affected, in the event of quashing of seniority list, they have not been arrayed as necessary and proper party to the litigation.

11. In the light of these facts and circumstances, appellants have not made out a case so as to interfere with the prayer sought in the writ petition. Accordingly, appeal stands dismissed while affirming the order of learned Single Judge.

P. B. Bajanthri, J)

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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