

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1475 of 2012

IN

Civil Writ Jurisdiction Case No 4287 of 2008

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1. The State Of Bihar
 2. The Principal Secretary cum Commissioner Human Resources Development Department, Govt. Of Bihar, Patna
 3. The Director Secondary Education, Bihar Secondary Education Office, Buddha Marg, Patna
 4. The Regional Deputy Director of Education, Patna Division, Patna
 5. The District Education Officer, Rohtas at Sasaram

.... Appellant/s

Versus

Damodar Pathak S/O Late Sobha Nath Pathak R/O Mohalla- Alamganj, P.S.- Sasaram, District- Rohtas

.... Respondent/s

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For the Appellant/s : Mr Shiv Kumar, AC to GA VII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 01-09-2015

Heard learned counsel for the State who is the appellant. The sole contesting respondent is dead. He had not been ordered to be substituted on the ground that if the appeal is dismissed then there being no order to the prejudice of a dead sole contesting respondent, no notice need be issued to him or his substituted heirs.

2 We have heard learned counsel for the State. State is aggrieved by the part of the order of the learned Single Judge quoted hereunder:

“The petitioner, however, will not

be made liable to return any amount of salary which he was paid for the work done till the date of the impugned order dated 23.02.2008. At the same time, the petitioner's retirement benefit shall be calculated by computing his length of service only upto 30.06.2002."

3 The facts are not in dispute. The writ petitioner had claimed that his actual date of birth was of the year, 1952 and, thus, sought to continue in service. State contended that his actual year of birth is 1942 which is certified by the Bihar School Examination Board. We are only on the aspect of recovery of money paid by the State to the writ petitioner. We concur with the view of the learned Single Judge that for the period during which the writ petitioner had worked and from whom work had been taken as a Teacher, no recovery can be made. The reason is simple. State cannot benefit of work having been taken from the petitioner free of cost. The writ petitioner is bound to be compensated for the work he has done. No service is gratuitous. Therefore, for the period having worked and State having benefited from the work, State is liable to compensate. Thus, there is no error in the order of the learned Single Judge.

4 Learned counsel for the State relies on the judgment of the Apex Court in the case of *Registrar, Cooperative Societies, Haryana & Others –Versus- Israil Khan & Others* since reported in (2010) 1 Supreme Court Cases 440 and, in particular, paragraph 9

thereof. In our view, the case is clearly distinguishable. In that case, the writ petitioner had persuaded by his act to get a wrong benefit by virtue of a wrong calculation in the pay scale which he was not entitled to. The right to correct a mistake inheres in an employer. In the present appeal, it is not a correction of the mistake that is in question but a compensation/salary to be paid for the work done.

5 Thus, we find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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