

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1625 of 2011

IN

Civil Writ Jurisdiction Case No. 726 of 2000

1. Shivakant Pandey S/O Late Deo Nandan Pandey R/O Village- Nawada,
P.S.- Govindganj, District- East Champaran

2. Pradeep Kumar S/O Sri Narayan Tiwary R/O Village- Madhubani, P.S.-
Dariyapur, District- East Champaran

.... Appellants

Versus

1. The State of Bihar

2. The Regional Deputy Director of Education, Tirhut Division,
Muzaffarpur

3. Sri Mithilesh Kumar S/O Sri Nitya Nand Bhagat R/O Mohalla- Mission
Compound, P.S.- Motihari, District- East Champaran

.... Respondent/s

With

Letters Patent Appeal No. 1735 of 2011

IN

Civil Writ Jurisdiction Case No. 726 of 2000

Mithilesh Kumar S/O Sri Nitya Nand Bhagat R/O Mohalla- Mission
Compound, Police Station- Motihari, District- East Champaran

.... Appellant

Versus

1. The State of Bihar

2. The Regional Deputy Director of Education, Tirhut Division,
Muzaffarpur

3. Shivkant Pandey S/O Late Deo Nandan Pandey R/O Vill.-Nawada, P.S.-
Govindganj, Distt.- East Champaran

4. Pradeep Kumar S/O Sri Narayan Tiwary R/O Village-Madhubani, P.S.-
Dariyapur, Distt.- East Champaran

.... Respondents

Appearance :

For the Appellants	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Dilip Kumar Tiwari, Advocate Mrs. Pushpa Sinha, Advocate
For the State	:	Mr. Sunil Kumar Mandal, SC-24. Mr. Bipin Kumar, AC to SC-24 Mr. Arjun Prasad, AC to SC-24

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

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And
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-09-2015

Both these appeals have been listed together under the heading “For Orders” for interim relief. Instead of dealing with interim relief, with consent of the parties, we have heard the appeals on merit for its final disposal at this stage itself.

The two appeals arises from the judgment of learned Single Judge dated 06.09.2011 passed in C.W.J.C. No. 726/2000. The appellants are the three writ petitioners in the said writ petition. They had filed the writ petition for setting aside the order of cancellation of their appointment as passed by the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, as contained in Memo dated 26.11.1999. Their case was that pursuant to advertisement issued from the office of the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur, they had applied for the post of clerk in different field of the office of Regional Deputy Director of Education in Tirhut Division, Muzaffarpur. They were selected and a panel was made. From that panel, from time to time, appointments were made, and accordingly

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they joined and they had been working for almost six years, when this order was passed, on the ground that their appointments being not in accordance with law and there being no roster clearance, their appointments were illegal. Learned Single Judge refused to interfere in the matter as in his view the appointment was indeed wrongly made. He has held that the writ petitioners, who are appellants here, could not produce the original documents relating to their appointment. This, according to the learned Single Judge, created grave suspicion whether the writ petitioners were at all appointed. He has also pointed out various discrepancies in the documents so produced, hence, the appeals.

Sri Rajendra Prasad Singh, learned Senior Counsel, appearing in support of the appeals, submits firstly that the show cause that was issued to the writ petitioners clearly stated that the appointment was made without following procedure and roster clearance had not been obtained. He submitted that this itself shows and presumes that petitioners had been appointed and had been working, therefore, the learned Single Judge was wrong in assuming that there was no appointment of the petitioners. Sri Rajendra Prasad Singh, learned Senior Counsel then points out that the

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learned Single Judge held that the writ petitioners could not produce any original documents and the State had clearly stated in their counter affidavit that no documents of appointment was available in their office. This, according to the learned Single Judge, shows that in fact, the appointments had not been made and it was all fictitious.

Sri Rajendra Prasad Singh, learned Senior Counsel for appellants drew out attention to the rejoinder to the counter affidavit as filed before the learned Single Judge wherein it was clearly stated that the Collector of the District having wrongly assumed that he was the appointing authority in support of all institutions in the district, had got all the records of the office of the Regional Deputy Director of Education, seized and got criminal cases instituted against the then Regional Deputy Director of Education, for making various appointments. Therefore, the records were there and that had been seized by the Collector.

Learned Senior Counsel then submitted and rightly so, that the learned Single took into account only half facts that is an erroneous approach. It is like considering only the examination-in-chief in view of the witnesses and ignoring what is said in the cross-examination. State did not even make



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an attempt to contradict what was stated in the rejoinder to the counter affidavit. How can then the statement of the State, that there were no records available, be taken to be sacrosanct truth. We are, therefore, satisfied that the learned Single Judge was clearly in error on all these issues.

Sri Rajendra Prasad Singh, then draw attention of this Court to several orders passed by this Court in different writ proceedings, before the impugned order was passed, in the present case, that all relates to the same transactions to the same appointments by the same person, pursuant to the same advertisement and the same empanelment. In all those cases, the writ petitions were allowed and the order of the RDDE dated 26.11.1999 had been set aside with direction for reinstatement. Some of these orders were taken in appeal by the State and the Letters Patent Appeals were dismissed. The matter was even carried to the Apex Court in SLP which was also dismissed.

Sri Singh submits that in this background to deny similar treatment to the writ petitioners would be grossly unfair. We agree.

Thus, in view of the facts and circumstances as noted above, we have no option but to allow these appeals and



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set aside the order under appeal, consequently we would allow the writ petition and direct that the writ petitioners be reinstated in service. As the writ petitioners had obtained stay while filing the writ petition and had been working till the writ petition was dismissed, they would not be entitled for the wages for the period having not worked. They have to be reinstated and granted full continuity of service otherwise. The reinstatement would be within a period of one month from the date of production of a copy of this order before the Regional Deputy Director Education, Tirhut Division, Muzaffarpur.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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