

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.72 of 2006

IN

Civil Writ Jurisdiction Case No. 10055 of 2004

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1. The State of Bihar.
 2. The Director, Secondary Education, Government of Bihar, Patna.
 3. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
 4. The District Education Officer, Sitamarhi.
 5. The Headmaster, High School, Athari, Sitamarhi.

.... Respondents/Appellants.

Versus

Prem Kumar Pandit, son of Shri Ram Prasad Pandit, resident of village-Issakpur (Gachhi Tola), P.O.-Mahuar, District-Vaishali.

.... Petitioner/Respondent.

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Appearance :

For the Appellants : Md. Anis Akhtar, AC to GA-1.

For the Respondent : Mr. Dhananjay Kumar, Advocate.

Mr. Bimlesh Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 24-04-2015

Heard learned counsel for the State and learned
counsel for the sole-respondent who was the writ petitioner.

State is aggrieved by the order of the learned Single
Judge passed in C.W.J.C. No.10055 of 2004, which was allowed

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on 01.08.2005, directing the respondent-State to pay the salary of the writ petitioner from 1999 up to date for having worked as a Peon in Government High School, Athari, Sitamarhi (hereinafter referred to as the 'School').

The writ petitioner filed the writ petition claiming that by virtue of appointment letter issued by the Regional Deputy Director of Education, Sri Bhola Ram in 1995, he was appointed as a Peon in the School on a sanctioned vacant post. He was never paid his salary since 1999. In 2004, the Headmaster of the School sought funds to pay his salary which was approved by the District Education Officer but, before payments could be made, they were ordered to be stopped by the District Magistrate. Hence, the writ petition.

A counter affidavit was filed by the District Education Officer, Sitamarhi in which a clear stand was taken that upon enquiry by the District Magistrate, it was found that the writ petitioner had used forged letters to seek appointment. Enquiries in the high school was made wherein teachers clearly gave statement that they did not know the Peon i.e. the writ petitioner. Enquiries revealed that the attendance of the writ petitioner was not in the school attendance register but in a separate register, the reason whereof could not be explained. Enquiry also revealed that

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there was only one sanctioned vacant post of Peon in the School and after due process in the year 2002, another Peon was duly appointed who was being paid his remuneration and whose attendance was being regularly marked. Enquiries further revealed that the initial letter of appointment of petitioner which was said to have been issued from the office of Sri Bhola Ram, the then Regional Deputy Director of Education was not found traceable in the office records of the Regional Deputy Director of Education nor did it find any mention in any discharge register. The reply to the counter affidavit was filed in which a purported letter of Sri Bhola Ram was annexed wherein he admits his signature on the alleged appointment letter of the writ petitioner. Of course, he does not say under what circumstances and how he appointed the writ petitioner and whether he had the authority to do so.

Regrettably, on these highly controversial facts, the learned Single Judge chose to find the writ petitioner's appointment valid and validly working entitling him to remuneration since 1999. Having considered the matter and perused the records, we are unable to agree with the view taken by the learned Single Judge. The very basic facts being seriously in dispute, the very appointment of the petitioner being in serious dispute, very working of petitioner and his presence in the School

being serious in dispute, the writ remedy was not the appropriate remedy and this Court ought not to have entertained the writ petition.

In such circumstances, we accordingly set aside the judgment and order dated 01.08.2005 passed in C.W.J.C. No.10055 of 2014 by the learned Single Judge and direct that the writ petition be dismissed. Accordingly, this appeal is allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/NAFR

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