

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.381 of 2015

In

Civil Writ Jurisdiction Case No. 7854 of 2013

Rakesh Kumar Mishra, son of Shri Tara Kumar Mishra, Resident of Village Bishunpura , Police Station - Nautan, District - Siwan , at present posted and working as Peon in the office of the District Teacher Employment Appellate Authority, Siwan , District- Siwan.

.... Appellant

Versus

1. The State of Bihar

2. The Principal Secretary, Education Department, Government of Bihar, Patna.

3. The Director, Primary Education, Bihar , Patna

4. The Regional Deputy Director of Education , Saran Division , Chapra.

5. The District Magistrate, Siwan .

6. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Siwan

7. The District Education Officer, Siwan

8. The District Programme Officer (Establishment), Siwan.

9. The Member, District Thatcher's Employment Appellate Authority, Siwan.

.... Respondents

Appearance :

For the Appellant : Mr. Umesh Kumar Mishra, Advocate

For the Respondents : Mr. Sanjay Pandey, G.P.-21

Mr. Nishant Kumar Jha, A.C. to G.P.-21

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 22-04-2015 The appellant filed CWJC No.7854 of 2013 with a prayer to direct the respondents to pay him, the arrears of salary since 25.11.2008.

The case of the appellant is that the Member of the District Teacher Employment Appellate Authority, Siwan engaged him as Attendant with effect from 25.11.2008, but

since then no salary has been paid to him at all.

The learned single Judge has dismissed the writ petition, through order dated 7.4.2014, by concluding that since the Member of the District Teacher Employment Appellate Authority, Siwan had no authority or has been vested with the power to appoint an employee, the question of payment of salary does not arise. The said order is challenged in this appeal.

Heard Shri Umesh Kumar Mishra, learned counsel for the appellant and Shri Sanjay Pandey, learned Government Pleader No.21 for the respondent.

It is only when the petitioner has been engaged by a person who is otherwise competent to appoint, that the direction as to payment of salary can be issued. The powers and functions of the Member of the Appellate Authority are stated in the Government order dated 25.8.2008. The establishment of the Appellate Authority comprises one Secretary, two Assistant-cum-Computer Operators and one Attendant. That very provision makes it clear that the appointing authority for those posts, is the District Education Officer. When there is such a clear provision, the question of appointing any person by the Member does not arise.

We do not find any merit in this appeal. The appeal is dismissed.

The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Sudhir Singh, J)

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