

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.213 of 2014**

**Arising out of**

**Civil Writ Jurisdiction Case No. 17292 of 2012**

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Prem Shankar Mandal son of late Mahdeo Prasad Mandal, resident of Village Badi Daulatpur Jamalpur, P.S. Jamalpur, District Munger.

.... .... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Chairman, Madhayamik Shikshak, Bihar School Examination Board, Budh Marg, Patna.
4. The Bihar School Examination Board through its Secretary
5. The Secretary, Bihar School Examination Board, Patna.
6. The Deputy Secretary (Vigilance), Bihar School Examination Board, Patna.
7. The District Education Officer, Munger

.... .... Respondent/s

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**Appearance :**

For the Appellant :

For the Respondents :

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)**

**Date: 20-06-2016**

Heard learned counsel for the parties.

The present intra-court appeal under Clause 10 of the Letters Patent of Patna High Court has been filed against the order dated 06.01.2014 passed by the learned Single Bench by which C.W.J.C. No. 17292 of 2012 filed by the appellant has been disposed off without granting relief prayed for in the writ application.

The appellant had approached the Court seeking quashing of Advertisement No. 43/2010 contained in Memo No. Ke/1967 dated 06.12.2010 issued under the signature of the

respondent no. 5 by which the matriculation certificate of the appellant of the year 1973 (A) was cancelled and the appellant was debarred from using the marksheet and original certificate.

The brief facts of the case are that the appellant had appeared at the 1972 Secondary School Examination but due to the result being withheld, he again filled up the form and appeared in 1973 annual examination and was declared passed in 2<sup>nd</sup> division. As per the complaint against him, he had given a different name of himself, his father and there was also variation in his date of birth as compared to the form which he had filled for the 1972 examination and accordingly when the same was detected the impugned order has been passed.

Learned counsel for the appellant submits that first and foremost, the form filled up for the said examination was not by the appellant but rather by his father, but more importantly the name, parentage and date of birth in the form filled up in the year 1972 was “Prem Shankar Prasad son of Mahdeo Mandal” and date of birth was “26.12.1960” whereas for the examination of the year 1973 he had filled up the form as “Prem Shankar Mandal son of Mahdeo Prasad Mandal” and the date of birth was mentioned as “01.12.1960”. It is submitted that such discrepancy was due to the fact that in the form which was filled up by the father, the variation in the name is a



common one and does not indicate any illegality inasmuch as in the villages, a very strict and fixed name may not be used and the difference in the name of the appellant and his father clearly shows that there is no major departure or difference between the same. Further, as far as the date of birth is concerned, the same in fact makes the appellant older by 25 days without there being any difference either in the month or the year. Thus, it is submitted that these differences do not give him any advantage in any manner and the same does not reflect any deliberate design or conduct with the object of securing any undue or illegal benefit or of any fraud. It is submitted that the same was purely an inadvertent “oversight” rather than a deliberate “misrepresentation”. Learned counsel submits that admittedly, as per the stand of the respondent Bihar School Examination Board (hereinafter referred to as the “B.S.E.B.”), his result for the year 1972 was withheld, that is, not declared and, thus, he was compelled to again appear for the next examination as there was no information with regard to the status of his 1972 examination. Learned counsel further submits that such minor discrepancy was also on account of the advise given by the school authorities to the father of the appellant to fill up the form with minor changes so as to ensure that the B.S.E.B. did not reject such examination form, which could have been so, if the details were identical to that of the 1972 form, for



the reason that technically the petitioner had not been declared failed and only his result had been withheld. Learned counsel submits that the father of the appellant under *bona fide* impression and without making such changes, which were not fraudulent in nature, in good faith, had filled up the form with minor changes, which in no way can said to give any advantage to the appellant, which he may not be entitled to in law and rather he has been disadvantaged by his date of birth having been recorded making him 25 days older as compared to the date of birth written in the 1972 form. Learned counsel submits that though the 1972 result, marksheet and certificate have not been cancelled, but the same have also not been given to the appellant and in view of the fact that acting on the basis of the 1973 result, the appellant, after acquiring higher qualifications, has also got a job, which would now be in jeopardy, if the action of the B.S.E.B. is not interfered with. Learned counsel has also drawn the attention of the Court to a judgment dated 24.11.2015 passed by a learned Single Bench of this Court in Cr. Misc. No. 51056 of 2012, by which the cognizance taken by the Court against the appellant in the criminal case filed against him for such conduct, has been set aside.

Learned counsel for the B.S.E.B. submits that there was misrepresentation on behalf of the appellant and thus he may not be permitted to take advantage based on the same and, thus, the action of

the B.S.E.B. cannot be faulted. Learned counsel also refers to an order dated 14.10.2009 passed by a learned Single Bench of this Court in C.W.J.C. No. 13190 of 2009 for the proposition that the result of the subsequent examination has been cancelled.

Having considered the rival contentions, the Court finds substance in the submissions of learned counsel for the appellant. Though, there is admittedly difference between in the examination form of the appellant with regard to the 1972 and 1973 examinations, but in the considered view of the Court and in the facts and circumstances of the present case, we do not find that such difference amounts to a fraudulent act on behalf of the appellant, moreso for the reason that the forms having been filled by the father, there being explainable reasons for having minor differences, which are not substantial or material to change the very nature of the information furnished, and also the fact that B.S.E.B. itself having withheld the result of 1972 without giving any details as to whether the appellant had passed or failed or any reason for such withholding of result, the conduct of the appellant or his father cannot be strictly said to be illegal, though it may have been irregular and the result of indiscretion on their part. Thus, taking into account the larger picture, only for the purposes of the present case, we find that the ends of justice and equity would be served, if the result of 1973 examination with regard

to the appellant is upheld and B.S.E.B. cancels the result of the 1972 examination, as far as the appellant is concerned. Accordingly, the appeal stands allowed. The order of the learned Single Bench dated 06.01.2014 passed in C.W.J.C. No. 17292 pf 2012 is set aside and the writ application stands allowed. The result of the year 1973 (A) examination as well as the marksheet and certificate issued in favour of the appellant are directed to be restored. The result, marksheet, and certificate, if issued in favour of the appellant with regard to the 1972 examination, however, shall be cancelled by the B.S.E.B. It is made clear that the present order has been passed only in the facts and circumstances of the present case and will neither act as precedence in future nor shall preclude the B.S.E.B. to contest any matter of similar nature which shall be decided on its own merit and not on the basis of the order passed in the present case.

**(Hemant Gupta, J)**

**(Ahsanuddin Amanullah, J)**

Anjani/-

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