

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 481 of 2013

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1. The State Of Bihar through the Commissioner-Cum-Secretary, Department Of Health, Government of Bihar, Patna
 2. The Director-In-Chief, Health Services, Government of Bihar, Patna
 3. The Civil Surgeon-Cum-Chief Medical Officer, Patna
 4. The District Leprosy Eradication Officer, Patna
 5. The District Malaria Officer, Patna
 6. The Incharge Medical Officer, Primary Health Centre, Fathuha
 7. The Circle Officer, Baniyapur, Saran (Chapra)

.... Appellant/s

Versus

Vijay Kumar Mishra Son Of Late Raj Narayan Mishra Resident Of Village -
Dhanau, P.S. - Baniyapur, District - Saran

.... Respondent/s

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For the Appellant/s : Ms Shashi Priya Pathak, Advocate

For the Respondent/s : M/s Ram Hirday Pd & Pranav Kr, Advocates

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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: 11-07-2016

A counter affidavit has been filed by the contesting respondent, who was the writ petitioner. We have heard the writ petitioner-respondent at length and perused the records.

2 From the records, it appears that one Raj Narayan Mishra was working as a Dresser in the Patna City Hospital. The counter affidavit itself, in paragraph 2, acknowledges this fact that he died on 26.09.1991, issueless. The widow of late Raj Narayan Mishra thereupon declared the writ petitioner-respondent to be her son. In



fact, it is admitted in paragraph 6 of the counter affidavit, now filed in this appeal, that the writ petitioner-respondent was the son of the brother-in-law of late Raj Narayan Mishra. Upon widow's assertion and a false sense of sympathy, the writ petitioner-respondent was appointed on compassionate ground upon the death of his so-called father Raj Narayan Mishra, which he himself admits, is not his father. When this fact was discovered, a notice was issued to him for cancellation of his compassionate appointment having been obtained on fraud and misrepresentation. That is what was challenged in the writ proceedings.

3 It appears from the averments in this appeal, which is not controverted by the writ petitioner-respondent in this appeal, that during pendency of the writ petition in the proceedings initiated against the writ petitioner, writ petitioner was found guilty of playing fraud and suppressing material facts and consequently his compassionate appointment was cancelled and he was dismissed from service. This fact was not brought to the notice of the Writ Court. The Writ Court, oblivious of this fact, merely on the ground that no proceedings have been initiated against the Circle Officer who gave the report of genealogy showing petitioner to be the son of Raj Narayan Mishra, the Writ Court allowed the writ petition holding the petitioner to be the son of Raj Narayan Mishra which fact, even the writ petitioner-respondent agreed, was not correct.

4 When this appeal was taken up, in view of the facts noted above, learned counsel for the writ petitioner-respondent sought leave of this Court to withdraw the writ petition to pursue his remedies against the order of dismissal passed by the authorities.

5 Having considered the matter, in view of the facts noted above, it is clear that the order of the learned Single Judge cannot be sustained. This appeal has to be allowed and as a consequence, the writ petition ought to be dismissed.

6 But, in the facts and circumstances, we permit the writ petitioner-respondent in this appeal to withdraw the writ petition itself. The effect would be that the order of the learned Single Judge, passed in *CWJC No 11547 of 2009* (Vijay Kumar Mishra –Versus- State of Bihar & Others) dated 15.11.2010, stands vacated.

7 However, without prejudice to the facts noted herein, the writ petitioner-respondent is given liberty to challenge the order of dismissal passed by the authorities by preferring such remedy to which he may be entitled in accordance with law.

8 This appeal is, accordingly, disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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