

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.57 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 16378 of 2001**

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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, Bhagalpur
 4. The District Education Officer, Banka
 5. Principal Cum Drawing And Disbursing Officer, High School, Jathar, Banka

.... Appellants

Versus

Jai Prasad Singh, Son of Late Govind Prasad Singh, Resident Of Village- Majhoni,
P.S.- Rajoun, District- Banka

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Mandal, SC 24

Mr. Bipin Kumar, AC to SC 24

Mr. Arjun Prasad, AC to SC 24

For the Respondent/s : Mr. Chittaranjan Sinha, Sr. Advocate

Mr. Alok Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 06-04-2016

The challenge in the present Letters Patent Appeal is to an order dated 8th April, 2013 in a writ petition filed by the respondent-writ applicant, wherein the learned Single Judge found that the appointment of the applicant is not justified, but to give parity with one Jitendra Kumar Singh and others, ordered that the order of

termination of the applicant will come into force after each of the aforesaid persons including Jitendra Kumar Singh are also removed from service.

In an appeal against the said order, learned counsel for the appellants points out that once the appointment of the writ applicant has not been found to be justified, there could not be any direction to allow him to continue. It will be perpetuating an illegality. Reference is made to the case of **Chandigarh Administration v. Jagjit Singh [(1995) 1 SCC 745]**.

We find merit in the said argument. Whether some persons have been allowed to continue who are similarly situated, cannot be a ground to continue with illegality. The Hon'ble Supreme Court in the case of **Jagjit Singh** (supra), had held to the following effect:-

“... Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law – indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in



favour of the other person is found to be a lawful and justified done it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. If it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course – barring exceptional situations – would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact that whether such an order or action is contrary to law or otherwise.”

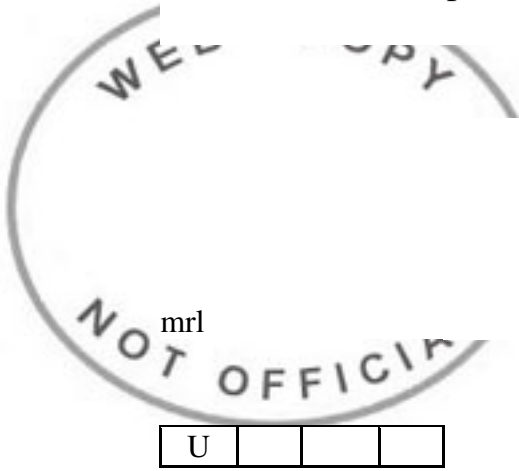
In view of the above, we find that the order of the learned Single Judge that order of termination will come into effect after all such persons are removed from service, cannot be sustained in law. Consequently, said part of the order is set aside.

However, having said so, we find that since other similarly situated persons have been allowed to continue, we direct the respondent authorities to take an appropriate decision in respect of the aforesaid alleged illegal appointments expeditiously, preferably within a period of six months from today and submit a status report in this Court.

While dismissing the writ application filed by the applicant,
the present Letters Patent Appeal stands disposed of accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)



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