

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 595 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 14259 of 2009

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Om Prakash Kumar @ Ram Prakash Mandal, Son of Late Kedar Mandal, Resident of Village- Sahmalpur, P.O.- Kajra, P.S.- Kajra, District- Lakhisarai.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Human Resources Development Department, Government of Bihar, Patna.
3. The Regional Deputy Director Of Education, Munger.
4. The District Education Officer, Lakhisarai, District- Lakhisarai.
5. The Headmaster, K.R.K. High School, Lakhisarai, District- Lakhisarai.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Singh with
Mr. Ratna Deep Prasad, Advocates.
For the State : Mr. Krishana Kant Tiwari, AC to SC-27

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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: 09-09-2016

Heard learned counsel for the parties.

2. The challenge in the present intra Court appeal is to the order dated 28.06.2012 passed by the learned Single Bench by which C.W.J.C. No. 14259 of 2009 filed by the appellant has been dismissed.

3. The appellant is the son of late Kedar Mandal, who died in harness on 24.06.1976 while working as Peon in the High School, Narattampur, Kajra in the district of Lakhisarai. The appellant was recommended for appointment on compassionate ground on



04.06.1987 and appointment order issued on 04.04.1988. As he was not paid his salary since February, 2002, he approached this Court in C.W.J.C. No. 1886 of 2003. The writ petition was disposed off by order dated 02.04.2003 in which it has been noted that there was doubt regarding the validity of the appellant's appointment on compassionate ground and, thus, he was directed to appear before the authority with all relevant papers and the authority was directed to pass appropriate orders after hearing the appellant. Pursuant to the same, the District Education Officer, Lakhisarai passed order dated 19.09.2003 directing removal from service of the appellant and also recovery of payment made to him. The same was challenged by the appellant before the Director, Secondary Education, who by order dated 10.11.2005 upheld the order passed by the District Education Officer, Lakhisarai. The same was challenged by the appellant in C.W.J.C. No. 14259 of 2009 and dismissal of the writ petition by the learned Single Bench by order dated 28.06.2012 has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the school in which his father was working was recognized by the Government in the year 1954 itself and, thus, death having occurred in the year 1976 of his father, his appointment made on compassionate ground is valid and legal. It was submitted that the appellant was fulfilling all the requisite criteria/qualification for such appointment and his removal is arbitrary. It was further submitted that no second



show cause notice was given to the appellant prior to such removal from service and, thus, such order cannot be sustained.

5. Learned counsel for the State submitted that the appointment of the appellant on compassionate ground was *ab initio* void for the reason that the school where the father of the appellant was working was a private school at the relevant time. It was submitted that due to connivance of the then school and State authorities, the appellant got his appointment in the year 1988 i.e., after 12 years of the death of his father. Learned counsel submitted that admittedly, the school in question was taken over by the State Government only in the year 1980, whereas the father of the appellant died in the year 1976 i.e., much prior to the take over.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The admitted position is that in the year 1976, when the father of the appellant died, the school was not a Government school and, thus, the service of any person working in the school was not under the State Government. This being the position, the scheme of compassionate appointment of the State Government being applicable only to the dependents of Government servants, the appellant was not covered by such scheme/policy. Thus, there could not have even any consideration for his appointment on compassionate ground under the State. Further, even at the relevant time, the elder brother of the appellant was appointed by the then Managing Committee of the school, immediately after the death of his



father, which also is ample proof of the fact that the school was never a Government school and there was a private Managing Committee. Thus, the appointment on compassionate ground of the appellant under the State Government was void *ab initio* and such being the case, it was a patent illegality which cannot be cured as it strikes at the root of the matter. The learned Single Bench has, thus, rightly not interfered in the matter relating to removal of the appellant from Government service and has also rightly interfered with regard to setting aside the order for recovery of emolument/salary paid to the appellant.

7. In view thereof, the order of the learned Single Bench under appeal being well considered, does not warrant any interference and, accordingly, the Letters Patent Appeal stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar

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