

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.262 of 2016
IN
Civil Writ Jurisdiction Case No. 1945 of 2015

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Onkar Nath S/o Brij Bhushan Singh, resident of Village- Nagwan, P.S. Naubatpur,
District- Patna.

.... Appellant

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, (Secondary Education), Bihar, Patna.
4. The District Education officer, Patna.
5. The District Programme Officer (Establishment), Patna.

.... Respondents

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Appearance:

For the Appellant : Ms. Shally Kumari, Advocate
For the Respondents : Mr. S.D. Yadav, AAG IX

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 02-12-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 30th of November, 2015 in CWJC No. 1945 of 2015 whereby the claim of the appellant for substantive appointment from 5th of February, 1985 remained unsuccessful.

3. One Kamlesh Mishra, a Clerk in the Project Girls High School, Naubatpur at Nagwan, claimed benefit of substantive service from 2nd of January, 1981 by filing CWJC No. 7429 of 1999. The present appellant was a party respondent in the said case. This Court allowed the writ application filed by Kamlesh Mishra. The respondents were directed to consider the services of the petitioner as



approved from the relevant date. Kamlesh Mishra crossed the age of superannuation on 31st of July, 2009. In pursuance of the said order of the learned Single Bench of this Court, the services of Kamlesh Mishra have been approved on substantive basis.

4. The grievance of the appellant is that he was appointed from 5th of February, 1985 and therefore, he is entitled to his substantive appointment from the said date. The learned Single Bench has recorded the finding that there is only one post of Clerk. Such post of Clerk stands filled up by Kamlesh Mishra in terms of direction of this Court. Therefore, the appellant had been given substantive appointment on 24th of June, 2008, though prima facie it appears that he could not get substantive appointment prior to superannuation of Kamlesh Mishra on 31st of July, 2009. Once there is a single post and the post was occupied, the appellant could not be given substantive post of Clerk from a date and for the period which is overlapping the service period of Kamlesh Mishra.

5. In view of the above, we do not find any merit in the present Letters Patent Appeal, which is accordingly dismissed.

(Hemant Gupta, ACJ)

Chandran/Ibrar

(Vikash Jain, J)

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